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BOMBAY IN THE MAKING

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BOMBAY IN THE MAKING

BEING MAINLY A HISTORY OF THE ORIGIN AND GROWTH OF JUDICIAL INSTITUTIONS IN THE WESTERN PRESIDENCY, 1661–1726

WITH AN INTRODUCTION BY SIR GEORGE SYDENHAM CLARKE

G.C.M.G., G.C.I.E.,
GOVERNOR OF BOMBAY

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BY

PHIROZE B. M. MALABARI

OF THE INNER TEMPLE
DEPUTY-REGISTRAR (APPELLATE SIDE)
HIGH COURT, BOMBAY.

T. FISHER UNWIN
LONDON: ADELPHI TERRACE
LEIPSIC: INSELSTRASSE 20
1910

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INTRODUCTION

A SPECIAL fascination attaches to the story of Bombay, which has been treated by many writers with varying qualifications from varying points of view. The great Empires of the world have generally been built up on the basis of territorial acquisitions from which expansion directly resulted. The fragile basis of British Dominion in India was the Factory, which long served its purpose as a trading centre until inexorable external forces came into operation, and fierce rivalry with France imposed upon the British people the alternative of a forward policy, or acquiescence in French aggrandisement. In the travesties of history which are too often retailed for the misdirection of Indian minds, the dominating factors in the establishment of British rule in India are commonly ignored. Undoubtedly the European competition for trade, felt long before the seventeenth century, was one of these factors; but a combination of great causes such as the rise of British Sea Power and the disintegration of the Moghul Empire, each the product of complex antecedent conditions, was required to bring about a situation which has resulted in peaceful and orderly progress throughout India.

Before the middle of the seventh century the followers of Mahomed had conquered Syria, Persia, and Egypt, and were in command of two great trade routes between India and the West. The third route, from the Indus, along the Oxus to the Caspian and thence to the Black Sea and the Mediterranean, became henceforth supremely important, and the fall of Constantinople at the beginning of the thirteenth century may be traced to the effort of the Venetians to monopolise the wealth and power to be derived from the merchandise of India. The discovery of the Cape route by Vasco da Gama at the end of the fifteenth century not only brought the Portuguese to India and

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later established them in a territorial capacity, but opened out an all-sea trade route between West and East. Here was a change fraught with vitally important results. If, as the years passed on, the Portuguese could not hold their own at sea, their hopes of becoming a great Power in the East were from this time doomed.

For a century the Portuguese spread the network of their trade and possessions across two oceans from Brazil to China; but their population and resources were alike inadequate to the demands of colonisation and of territorial expansion on a large scale, and to the development of the sea-power necessary to retain the position of vantage which they were the first to secure. Before the final downfall, Portuguese civilisation as introduced into India had suffered eclipse, and in the latter half of the sixteenth century the proceedings of the Inquisition had become abhorrent not only to Indians but to public opinion in Europe. Meanwhile other forces were let loose. The defeat of the Armada in 1588 ended the menace of Spain, and the English and the Dutch, left free to undertake maritime enterprise in eastern waters, quickly came into conflict with the decaying power of the Portuguese and subsequently entered upon a long and bitter contest for naval supremacy. The gradual disappearance of Holland from the roll of great Sea-Powers, and the entry of France under Louis XIV. into the lists as the rival of England for eastern dominion, were fraught with important issues affecting the destinies of India. British supremacy, established after the Peace of Utrecht in 1713, was again to be rudely challenged in the long series of great wars which ended in 1814, when for a time the fate of India hung in the balance.

Thus intimately, since the advent of the Portuguese, has the history of India been bound up with that of the great forces which convulsed the Western world, swaying from side to side, but ultimately controlled by "the power of the sea" recognised as a mighty agent in the affairs of nations by Thucydides twenty-one centuries ago.

Bombay was not one of the many rich gifts of the sea to England, although it must have passed from her hands if naval supremacy had not been asserted at the periods of great national crises. The finest harbour in the East became a possession of the Crown on the marriage of Charles II. to Catherine of

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Braganza, and was leased to the East India Company in 1669 for the modest rental of £10 per annum. Why this important possession was selected by the Portuguese as part of the dowry of their Princess is not clear; but in 1662 the Viceroy of Goa wrote to his King: "I see the best port your Majesty possesses in India, with which that of Lisbon is not to be compared, treated as of little value by the Portuguese themselves." If the great importance of Bombay was not realised by its first European owners, no clearer perception was vouchsafed to their British successors for many years. As ships increased in tonnage and as the trade of India developed, Bombay inevitably grew into a great maritime port, and the opening of the Suez Canal made it at once the main gate of communication between India and the Western world.

Bombay now has about one million inhabitants, and is the centre of a great volume of valuable trade and of a most important mill industry. It is one of the best governed and certainly the healthiest city in the East; but this proud position has been reached through many early struggles, some acute vicissitudes, and much corruption and misgovernment. Mr. Malabari's contribution to the story of Bombay covers the period from the transfer to the Crown to 1726. Thus the early difficulties with the Portuguese, the eventual severance from the authority of Surat, the military mutiny under Captain Keigwin, the Sidi invasion, and the depredations of the Angrias come within the scope of BOMBAY IN THE MAKING. The times were rough, and their roughness was reflected perhaps with exaggeration in the early struggles of Bombay. The chapter entitled "The Barbarity of the Age" shows the appalling severity of the sentences meted out to offenders; but, as Mr. Malabari admits, the servants of the East India Company were probably more humane than the contemporary dispensers of justice in other countries, while the ancient criminal laws of India "having regard to the proverbially mild nature of the Hindus . . . strike one as peculiarly atrocious." The "making of Bombay" during the period under consideration was frequently hampered by the appointment of the grossly unfit to high positions. The first Governor of Bombay under the Crown was found guilty of grave malpractices and was recalled after creating confusion in the important question of land tenure not only by culpable neglect

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to ascertain the rights of Government but by granting fictitious title deeds.

The personages who figured in the early administration of Bombay do not form an attractive group; but two notable names emerge. George Oxenden, appointed Chief of the Factory at Surat in 1662, proved himself a gallant and resourceful soldier when the town was threatened by the Marathas. The duty of taking over Bombay on behalf of the Company fell to him, and though he never seems to have resided there for any length of time, his fine, upright character left an enduring mark upon the early history of the city. Gerald Aungier, to whom Mr. Malabari devotes a chapter, proved a worthy successor, who till his death in 1677 laboured to bring order out of chaos and to lay deep the foundations of British Justice. In Aungier's prescient words Bombay was "a city which by God's assistance is intended to be built," and alike in the Convention associated with his name and in his administrative acts he showed rare clearness of vision and fearless integrity of purpose. After his death decadence seems to have set in. A population which had increased from 10,000 to 60,000 during his period of office dwindled to 16,000 in the forty years following, and during the last quarter of the seventeenth century administrative chaos, leading to general lawlessness, prevailed. The rising sun of Bombay suffered temporary eclipse.

In an interesting chapter on "The Administration of Justice" Mr. Malabari traces the rudiments of a judicial system to Aungier, who divided the islands into two sections, each with five unpaid justices, in order that, in the words of the Government Resolutions, "the inhabitants may have the greater satisfaction in the execution of the laws, and that all things may proceed the more regular." A salaried Judge appeared in 1675, and after a series of vagaries was suspended for wilful disobedience of orders. The Deputy-Governor and Council constituted themselves a Court of Appeal, which was doubtless as ignorant of law as the functionaries whose proceedings it revised. Under the provisions of the Royal Charter of 1683, a Judge Advocate "learned in the Civil Law" was at length sent out from England, arriving at the time when Bombay was in the hands of the military mutineers headed by Captain Keigwin.

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"Some Interesting Trials" serve to throw light upon the administration of justice during the early years of British Rule in Bombay, and incidentally afford glimpses of its social conditions, which are supplemented by "Gleanings" from the Minute Book of the earliest Court of Judicature. Unquestionably legal records may furnish valuable material to the historian of morals and customs, and there are masses of documents in the custody of the High Court of Bombay which might well repay investigation before they have decayed beyond the possibility of scrutiny. As Mr. Malabari points out, the labour required would be immense; but there is much force in his plea that it should be undertaken before it is too late. The chapter on "Landed Property" is interesting and important. The progress of a great city depends largely on the handling of the land problem in its early days. In the case of Bombay, carelessness, or worse, has left an indelible mark, and the citizens of to-day are heavily penalised by reason of the want of foresight in the past. As the author justly remarks, "Landed estate has been likened to an animal with its mouth always wide open, and it was allowed to remain in that position till it swallowed the greater portion of the most valuable property in Bombay, the ownership of which was undoubtedly vested in the East India Company. The result was that landholders as well as tenants surreptitiously encroached upon property to which they had no more right than the man in the moon." Town planning is a comparatively modern ideal, though the city of Washington is an early monument of what it can accomplish; but others besides Aungier must surely have been able to foresee the great feature of Bombay and might have been expected to carry on the work which he most wisely attempted.

Nearly two centuries have passed since the end of the period with which this volume deals, and Bombay has moved far and fast. A noble city has arisen on the barren island ceded by the Portuguese, and while there is still ample scope for progress the British people may well feel proud of what has been accomplished. The maintenance of peace and order throughout India has led to the creation of a vast trade of infinite value to the people. The enrichment of Indians through the operation of that trade is nowhere so conspicuous as in Bombay, where the

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Parsis were the pioneers of Indian enterprises which are now rivalled by those of Hindus and Mahomedans successfully following in their footsteps. While the wealth of Bombay tends more and more to flow to Indians of many classes, British administration has left an indelible impress upon the great city, although the guiding hand is now lightly felt.

Few traces now remain of the early days with which Mr. Malabari deals, and man has laid a heavy hand upon the natural beauties which many visitors have recorded. A thick pall of smoke, the wasteful outpouring of numberless chimneys, overhangs the island and obscures the splendid background of the Western Ghats. Yet when the sunset paints the waters of the harbour and tinges the sails of the old world craft that still ply their trade unchanged since the time of the Angrias, or when at night the necklace of lights embraces the noble sweep of Back Bay under the stars, none can deny the fascinations of the great Eastern Gate of India, of the city which, in Gerald Aungier's words, was to be built "by God's assistance."

G. S. C.

Bombay, *April*, 1910.

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PREFACE

AN interesting account of the early history and growth of the Calcutta High Court in the *Calcutta Review*, some years ago, led the author to attempt a similar account of the Bombay High Court, as no such account has been written before. His first idea was to write a brief essay on the subject and read it before the then newly formed Bombay High Court Moot Society. He mentioned this to Sir Lawrence Jenkins, the late Chief Justice, who warmly approved of the idea. Thus encouraged, the writer set to work, but he soon realised that the task was beset with many difficulties. The initial difficulty he felt was as regards the collection of requisite materials. He was then doubtful of getting enough of them even for a brief essay. But it soon became apparent that the materials were more than ample, so copious indeed that he felt inclined to expand the scope of his work and to write a series of articles on the subject for *East and West*. As fresh materials came to hand, however, the writer found it increasingly difficult to decide as to what to retain and what to reject, until at last he made up his mind to risk publishing an account of the history of the Bombay High Court in its present book-form. At this stage another difficulty presented itself. He felt that such an account, if it ignored certain essential features of the establishment of the British Empire in India, particularly in the Western Presidency, would be not only uninteresting, but perhaps unintelligible. Then there were numerous landmarks in the legislative history of this Presidency, which must of necessity find place in a volume which professed to give a complete account of the establishment and growth of the Bombay High Court. There were besides hundreds of manuscript records lying in a state of oblivion, which contained the history of the Mayor's Court, the Recorder's Court, and the Supreme Court of Judicature in Bom-

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bay. It was impossible to ignore these altogether, equally so to condense even the more important of them in one volume. These reasons led to a further development of the original idea, and the writer thought it best to deal with the whole subject in four separate volumes, the first, namely the present, dealing with the earliest period (1661–1726), the second with the Mayor's Court (1726–1798), the third with the Recorder's Court (1798–1826), the last bringing the account down to the present day. This seems too ambitious an undertaking, and the writer himself feels doubtful of his ability to carry it through. But having gone so far, and having been encouraged by competent friends, he feels emboldened to bring out the first volume, taking his chance of publishing the subsequent ones as time and opportunity permit.

It was the writer's intention to give a common title to the whole series, namely, "A History of the High Court of Bombay," each volume indicating the period it dealt with in the main. But he soon found that such a title, particularly for the first volume, would be a misnomer. For though it purports to be mainly a history of the origin and growth of judicial institutions in the Western Presidency prior to 1726, it also deals with many episodes in the early history of this island-city, which have rather a remote bearing on the subject proper. For this reason the title of the present volume had to be changed. The selection presented much difficulty, which was solved by Sir Herbert Risley, who suggested the happy title the volume now bears, "Bombay in the Making," the sub-title indicating the primary object of the book. This title gives finality to the volume which need not now be considered one of a series. For the dream of a series of four volumes may never be realised.

Being his first serious attempt of the sort, the writer has ventured to bring out this book with the utmost diffidence. Perhaps the reader will doubt the need of another volume giving, more or less, an account of early Bombay, when so many excellent books on the subject already exist. Hamilton, Fryer, Anderson, and Bruce, of the older generation, and Campbell, Da Cunha, Douglas, and Edwardes, of the present, have left most interesting accounts of the rise and growth of this beautiful city, and the present writer's indebtedness to these veterans

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is acknowledged on almost every page of this volume. His main object, however, was not to give an account of early Bombay, but to write a history of the origin and growth of judicial institutions in the Western Presidency before the establishment of the Mayor's Court. None of the above-mentioned authors has dealt with this subject at any length; indeed, most of them have barely referred to it. It can therefore be said, without fear of contradiction, that until now no work has existed describing in detail the various stages of evolution through which the administration of justice in Bombay, during the last two hundred years, has passed. It is to fill this gap that the present volume has been published; if it fulfils that object, even in a small measure, it will not have been written in vain.

At first sight the account will look inordinately long. It could have been curtailed to an appreciable extent by omitting from some of the chapters details which might perhaps be considered superfluous. For instance, the chapter headed "Some Interesting Trials," as originally written, did not cover half the number of pages it covers now. Most of the early writers have referred to the trials of the Worshipful Lawrence Parker, Rama Kamati, and Dalba Bhandari, but on a careful scrutiny of the manuscript records containing the proceedings of these trials, the writer found that many interesting details were left unnoticed by them. These ancient records are now in such a state of decay that, in the course of a few years, nothing will remain of them but dust. The writer has, therefore, deemed it advisable to give copious extracts from them even at the risk of appearing prolix. Then there are the two chapters on "Landed Tenures in Early Bombay" which, to the uninitiated, may seem out of place in a book which deals primarily with the origin and growth of judicial institutions. But land plays such an important part in the *making* of a city, that to have omitted them from the present account would have rendered it practically incomplete. Indeed, some competent friends think that these two chapters are, perhaps, the most valuable in the book.

There are other defects in the book of which the writer is not unconscious. But much may be forgiven to an author who has, for the first time, attempted a rather ambitious literary work in a language not his own, and who has official and other duties

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daily to attend to. His leisure was at times so scant that he could not take up the MS. for months. The volume had, therefore, to be written by instalments, as it were, with the inevitable result that it suffered from want of continuity of style. Whatever its defects, however, the writer can honestly say that he has spared no pains to make the account accurate and worthy of the city whose name it bears. He has worked hard at it, devoting almost the whole of four years' leisure to the book. At the same time he has enjoyed writing it, for it has been a labour of love to him. He does not regret for one moment the trouble and cost it has entailed.

Though an attempt has been made in this book to give a historical account of the origin and growth of the judicial institutions of this city in the days that are no more, the author by no means professes to be a historian. Bombay has had many eminent historians, and all he has done is to follow them, or rather to take from their pages what was useful to his purpose, and to arrange the materials so collected in the order which seemed to him best suited to such a publication. He has tried, wherever possible, to introduce new and unpublished matter, but the mine has been explored so thoroughly by abler men before him that even the most diligent digging has disclosed few gems of real value. However, the writer hopes that the pages describing the administration of justice under the Portuguese in India will be found to contain something original and specially interesting, and that the gleanings from an old record, collected in the last chapter, will be found new by most readers.

To the authors who have left the scenes of their labour the present writer has already acknowledged his indebtedness; he is no less indebted to those who are happily living and who have been ever ready to help and guide him. Many friends in England and India have been good enough to glance at the MS., offering valuable suggestions and evincing a sympathetic interest in the undertaking, and but for encouragement from these, the present volume would not have seen the light of day. If the writer refrains from acknowledging his indebtedness to them individually, it is not because he does not feel sufficiently grateful to them, but because he fears that the list of his literary creditors would be too long for such a modest volume, and also

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because he feels that the creditors are too rich in literary fame to care for formal acknowledgment from an unknown author. It would be rank ingratitude, however, if the writer did not take this opportunity of thanking his two English friends, Mr. H. D. Rendall, I.C.S., Judicial Assistant to the Agent to the Governor, Kathiawar, and Dr. Thomas Baty, D.C.L., LL.D., Barrister-at-Law, for carefully revising the MS. and making valuable suggestions for its improvement. He is particularly obliged to Dr. Baty, for not only has he revised the MS. carefully, but he has also furnished him with interesting and instructive notes on certain obscure legal points occurring in this volume. There is one more name which it is the writer's duty as well as privilege to mention, the name of His Excellency Sir George Clarke, who has lent distinction to the volume by writing an introduction for it. It is but fitting that His Excellency's name should be associated with a book which describes the *making* of this second city in the British Empire, for among the Makers of Modern Bombay no Governor will have a higher claim to recognition than Sir George Clarke. Those who read the chapter on Gerald Aungier, one of the earliest and most famous Governors of Bombay, will agree that in many respects the present Governor resembles that great and good man.

This preface has already grown very lengthy — which is, perhaps, in keeping with the volume. Before bringing it to a close, however, the writer would like to make one thing clear. There are most valuable records lying in the High Court which could unfold many an interesting tale of bygone days, if they were made to speak. But to invest them with the power of speech is no light task. To show what this means, it may be mentioned that several months were spent in scrutinising the solitary record from which gleanings have been given in the last chapter. And it is worth noting that this particular record was the leanest of them all, most of the others being four times as large. Think of the years of labour that would be required to scrutinise the hundreds of records of the Mayor's Court, the Recorder's Court, and the Supreme Court that are now lying practically in a state of oblivion! And besides the labour, there is the question of cost, for research-work, even in the field of literature, is rather expensive. The question arises whether it is worth while incurring this heavy cost in order to bring to

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light these records. An enthusiast would answer the question in the affirmative. But putting enthusiasm aside, it seems worth inquiring, from a practical point of view, if these records would throw light on the laws and legal procedure of a bygone age, as also on the customs and manners, on the actual life of the people. It must be remembered that these are not mere records of legal proceedings; they, or at least the earlier among them, cannot be very unlike the record that has been drawn upon for the purpose of this volume. If this view is correct, it becomes obvious that copious extracts from these records would be well worth publishing, whatever the cost and the labour. The question of cost might well be considered by the Government and the High Court. And the sooner it is solved, the better, for the records are fast crumbling to pieces, and, in the course of a few years, they may be lost to us for ever. The authorities probably take what care it is possible for them to take, but the Record Room daily gets fuller, and the doctrine of "the survival of the fittest" holds true even in the case of records. Who knows but that some day a Government Resolution may sanction the destruction of this valuable raw material to make room for present needs? There is yet time to save these literary relics from such a fate.

P. B. M.

High Court, Bombay, *June*, 1910.

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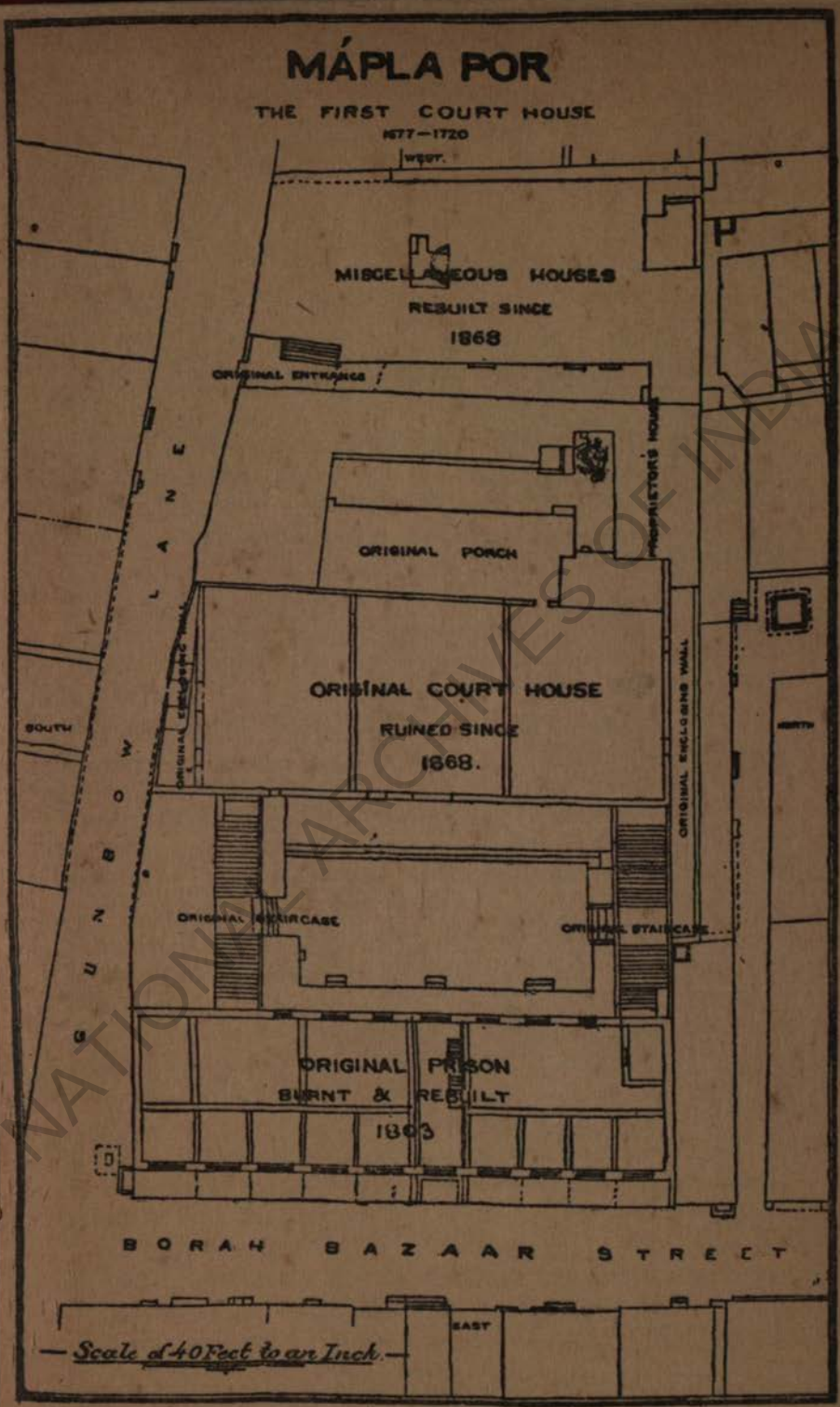

MÁPLA POR OR AUNGIER'S COURT HOUSE, 1677.

(Reproduced from Campbell's *Bombay Gazetteer Materials*, xxvi., part iii., p. 660.)

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PRELIMINARY REMARKS

THE title of a book usually indicates the subject therein dealt with, while the sub-title indicates the writer's secondary object. The present volume is, however, an exception to this rule. Our primary object is indicated by the sub-title rather than the title, namely, that it is an attempt to trace the origin and growth of judicial institutions in the Western Presidency as they existed at the end of the seventeenth and beginning of the eighteenth century. In view of the several excellent, though far from exhaustive, books dealing with the early history of the town and island of Bombay, it would be presumptuous on our part to attempt another volume on the subject. On the other hand, there is not a single book which describes, in any detail, the various stages of evolution through which the administration of justice in Bombay, during the last two hundred years, has passed, or the several judicial institutions which were established in it from time to time and which have contributed to build up the great institution now known as "His Majesty's High Court of Judicature at Bombay." But an attempt to trace the history of the High Court from its foundation is beset with no small difficulty. For the foundation was not laid in a particular year or even in a particular decade. The growth of judicial institutions in the country ran concurrently with the growth of the British Empire in India. The history of the Indian Empire is said to have commenced without a strip of territory. "A warehouse," says Anderson, "was expanded into a province; a province into an Empire."* The growth of this Empire was so gradual in the beginning as to be almost imperceptible. Equally imperceptible was the growth of judicial institutions which came into being and attained maturity in Western India with a development proportionate to the needs of the time. The Custom

* *The English in Western India*, by Philip Anderson (1854).

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House of Bombay, where the "customers" first dispensed justice in 1670, was expanded into Aungier's Fair Common House (now known as "Mápla Por," or more correctly "Mápla Pol"), and the latter into what was known for nearly a century as the "Admiralty House" (the present Great Western Hotel), where the Mayor's Court from 1726, the Recorder's Court from 1798, and the Supreme Court from 1823 administered justice to the town and island of Bombay and to the territories within its jurisdiction. It was as lately as 1879 that the Bombay High Court, constituted in 1862, was removed to the stately pile of buildings which adorns the Esplanade to-day.

It is well known that the immediate predecessor of the Bombay High Court, in its original jurisdiction, was the Supreme Court of Judicature, established in 1823 on the abolition of the Recorder's Court, while the old Sadar Diwani and Sadar Foujdari Adawlats were merged into its appellate jurisdiction. A history of the Recorder's Court, which came into being in 1798, would probably present but little difficulty, for it is set forth in the two delightful volumes of the *Life of Sir James Mackintosh*, the most eminent Recorder of Bombay and one of the ablest judges this Presidency has had. The records of this Court are still extant, and although more than a century has elapsed since its abolition, Time seems to have dealt with them tenderly. The Recorder's Court was set up in place of the Mayor's Court, with certain improvements to meet the demands which the state of society could then claim. It is possible to write a coherent account even of this ancient Court, for its records have been preserved to this day, though many of them are crumbling to dust. The Mayor's Court administered justice, or, to be strictly accurate, what passed as justice at the time, for more than seventy years. The administration of justice in Bombay in the eighteenth century was very different from what it is in the twentieth. Mackintosh gives us a glimpse into it when a Mayor and nine Aldermen sat as a Court of Record to dispense justice to the inhabitants of the town and island of Bombay and its immediate vicinity. Describing the Court which preceded the one over which he himself presided with such distinction, he writes:

"Justice had previously been administered by the Mayor's Court—a body consisting of a Mayor and Aldermen, chosen by the local Govern-

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ment, generally from the civil servants of the establishment or the leading merchants of the place; men who, whatever might have been their talents, could of course have had no legal education, and who could possess little systematic acquaintance with the principles of law. . . . The Judges, too, it may be supposed, were too much connected in trade, in official business, or in private society, to be any check upon each other. The Governor, who exercised the powers of the Government, had obvious means of benefiting or injuring every one of them in his promotion or his commercial interests. The attorneys practised also as counsel, but had seldom had any training in a regular Court of Justice." *

The records of the Mayor's Court would unfold many an interesting tale to the antiquary who cared to unearth them. But he must walk with wary steps in the lumber-room and exercise great care in deciphering the scores of volumes that lie half-buried under the dust of nearly two centuries. For though the records are, more or less, intact, the white ant has played sad havoc with their contents, damp and neglect contributing their quota to the work of destruction. In spite of this, however, an attempt to write an account of the Mayor's Court ought not to present any serious difficulty. The difficulty will arise only when we go farther back and are confronted with a dearth of materials regarding the origin and growth of judicial institutions in Bombay at the end of the seventeenth century, when the English had barely hoisted the Union Jack over the battlements of the Fort of Bombay, a few years after the Marriage Treaty between England and Portugal in 1661. It was in this memorable year that the Infanta of Portugal brought to King Charles II. a rich dowry, including the port and island of Bombay. But though a British possession from this date, it was only in 1669 that it was ceded by the Crown to the East India Company, after a series of disputes between England and Portugal as regards the boundaries of the newly-acquired territory. In this connection, attention may be drawn to one important feature in the history of Bombay, which distinguishes this Presidency from the other Presidencies of India. The first settlement which the East India Company established in this country was at Surat, which could, at one time, boast of being the most important factory in this country, holding sway even over Bombay and other English settlements in India. Factories were in time

* *Life of Sir James Mackintosh*, i. p. 269.

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established at Calcutta and Madras. The natives in Bengal were, for a long time, regarded as subjects of the Mogul, though they were so but in name, and in Madras, in the words of Sir Erskine Perry, an eminent judge who presided over the Supreme Court about the middle of the last century, "a morning's walk was sufficient to carry any native, who might desire to implead his adversary, out of the precincts of the factory." On the other hand, Bombay was never a factory, but a British possession from the very first, and has remained so to this day. Attempts were made to establish a factory here, but they all failed. It was to this fact that the Municipal Corporation alluded, with just pride, in an address to his Majesty the King-Emperor on the occasion of his visit, as Heir-apparent, to this city in November, 1877. "Bombay," said the Civic Fathers, "may lay claim to the distinction of being a Royal City; for this island first became an appanage of the Crown of England through forming part of the dowry of Charles the Second's Portuguese bride." And it was also to this significant fact that Sir Erskine Perry made pointed reference in his learned judgment in *Perozbai* v. *Ardaseer Cursetji*,* where he had to decide, in effect, as to who were British subjects in the town and island of Bombay.

To write a history of the origin and growth of the early judicial institutions in this Presidency without saying something as to the origin of the island and its acquisition by the Crown would be like describing the course of a mighty river without ascertaining the sources from which it flows. Not only will it be necessary to refer to the early history of the town and island of Bombay, but in order to understand all the important events prior to the cession of Bombay by the Crown to the East India Company, we shall have to allude, even though briefly, to the formation and constitution of this far-famed Company. The Company was practically in its infancy when Catherine of Portugal brought Bombay with her dower to her sovereign lord. The Charter by virtue of which the Company was formed was granted by Queen Elizabeth in 1600. A certain vague legislative and judicial authority was vested in the Company by this Charter, long before they possessed any territory. It will, therefore, be necessary to refer to its provisions bearing on this point. For, though it is not our

* Perry's Oriental Cases, p. 67.

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purpose to write a history of legislation in the Western Presidency, a history of judicial institutions cannot but, to some extent, comprise a history of legislation as well. To separate the one from the other would be to sever, as it were, the body from the soul. Besides the Charter of 1600, we shall also have occasion to refer to several other important charters, statutes, acts, and other legislative enactments which will throw some light on the history of the period dealt with in this volume. For instance, when the Crown ceded the port and island of Bombay to the East India Company in 1669, a Charter was granted by Charles II.—a charter which Sir Erskine Perry has pronounced as "the only solid basis for many of the most important functions of government and of jurisdiction which have been exercised not only in Bombay but in India generally."* Such being the important character of this Charter, it will be necessary to examine, in the proper place, its various provisions in some detail. We shall also have to describe briefly the process by which this imperial city was acquired by the Crown, in order to understand the events that preceded its cession to the Company and those that followed it. For without this knowledge it will be difficult to comprehend some of the incongruous and peculiar phases of the early history of Bombay. In our own days, when the sphere of executive administration is so clearly marked off from that of purely judicial administration, and the demarcations are guarded with so much jealousy, it seems incredible that the Governor or the Deputy-Governor of Bombay, at the end of the seventeenth and for the better part of the eighteenth century, was Commander-in-Chief, Chief Justice, Port-Trust, Chamber of Commerce, and Municipal Corporation all rolled into one!† It would also be difficult, without some knowledge of the circumstances and influences prevailing in those days, to account for the fact that men in high authority were found guilty of malpractices, that even Governors were proceeded against for

* *The Advocate-General* v. *Richmond*, Perry's Oriental Cases, p. 566.

† *Bombay and Western India*, by James Douglas, i. p. 61.

In this connection it is interesting to note that the centralisation of the principal functions of government is not so rare as is popularly supposed. For instance, the Governor of the Falkland Islands is to this day the Chief Judge there. Until very lately, the Governor and Council of Hongkong were the Appellate Court there, and up to 1855 the Governor and Councillors constituted the Courts of the Straits Settlements.

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corruption, and that the judges whose duty it was to suppress crime were themselves found to be implicated in serious offences. The loose morality of the age may be urged as an excuse for such a discreditable state of affairs. The East India Company began to trade during a reign when even the Lord Chancellor of England was accessible to bribes, and a false judgment could be purchased from "the most exquisitely constructed intellect that has ever been bestowed on any of the children of man."* Local circumstances will also explain these ugly features of the early administration of Bombay better than a dissertation on the corrupt practices which prevailed everywhere at the time. But before this explanation is furnished, let us first take a brief retrospective survey of the early history of the English in Western India.

* Macaulay's *Essay on Lord Bacon.*

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BOMBAY IN THE MAKING

CHAPTER I

A RETROSPECT

IT would be interesting to inquire into the origin and early history of Bombay, but such an attempt would be beyond the scope of our undertaking. Suffice it to note that the Hindu period of sovereignty over Bombay is lost in obscurity. Bombay did not of old consist of one island only, but formed one of a group of seven islands described by Ptolemy as Heptanesia. One may safely assert that in those days Bombay was too obscure a place to have attracted the notice of the Hindu sovereigns. They probably did not know its exact whereabouts and did not care to. Even the Mahommedan rulers do not seem to have felt any particular interest in it, and the Portuguese noted the remarkable insularity of the place only after their sovereign had made a gift of it to Charles II. Nor must it be supposed that England was at all aware of the value of her new possession. On the contrary, those who brought about the Marriage Treaty were ignorant even of the geographical position of Bombay. And when it was ceded to the Company the Court of Directors were unwilling to exchange Surat for Bombay as their premier factory in India. There was, however, one man in the service of the Company who, with an almost prophetic vision, foresaw its bright future. This was Gerald Aungier, whose remarkable career will form the subject of a separate chapter. Douglas says that without Aungier Bombay would have been lost to the English nation, and what James Douglas says of Bombay and the men who "made" it, deserves considera-

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tion. In 1676 Aungier spoke of Bombay as "the city which by God's assistance is intended to be built"—and by God's assistance he built it, or at least laid its foundation-stone. But the development of Bombay was for a long time hampered by its early obscurity and insignificance. Mackintosh compared Bombay to a city of the dead, and Wellington wished to God he had never had anything to do with it. Even at the present day one sometimes hears the echoes of this dissatisfaction regarding "the poor little island," as Pepys querulously spoke of it in his Diary; yet no one can deny the supreme importance, political and commercial, which it has now attained, and no one doubts that this imperial city will rise still higher in the future.

But let us go back to the early days. About the middle of the fourteenth century the sovereignty of Bombay passed into the hands of the Emperor of Delhi. Though this period is less legendary than the one which immediately preceded it and embraces more than two centuries, it has left no important landmarks in history. The Mahommedan supremacy was never very firmly established, and Mr. Edwardes surmises that it must have been little more than theoretical and that the care of the people and internal administration were practically in the hands of tributary Hindu Rais or chieftains.* If, then, the Mahommedan rulers made no serious efforts to establish their sway over this island, we may conclude that they must have shown even greater indifference towards the administration of justice in it. Not that under Moslem rule there was generally no system, however imperfect, whereby people were guaranteed some sort of peace and order. As is recorded in the *Ain-i-Akbari*, which contains a collection of the laws and regulations during the reign of the Emperor Akbar, the old judicial system was thoroughly overhauled and a new one substituted to meet the requirements of the times. Baber had no time to construct any sort of system, for he was absorbed in settling religious differences and organising territorial conquests, and passed away like a whirlwind. His successor, Humayoun, also, was allowed too little rest by Shershah to attend to internal administration, and it was not until Akbar had ascended the throne that a workable system was eventually constructed. It may not be uninteresting or out-of-place to give a brief outline of it here. In the early part

* *The Rise of Bombay*, p. 60.

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of Akbar's reign the old system was followed, under which the *Shaikh-ul-Sadar* * was regarded as the head of the judicial administration. But when Abul Fazel and other learned and liberal-minded men came to the Emperor's Court several important changes were introduced. The system of dispensing justice under the Mogals at that time was not unlike the present judicial system of Persia. In every street and village there was an officer known as the *Meer Mahal* †—that is to say, head of the street, or village headman—who settled all petty disputes on the spot and helped the *Kotwal*, his immediate superior, to maintain peace and order. All the important civil suits went up to the *Kazi*, who was specially delegated by the King for that purpose: the Kazi tried the cause, and the *Mufti*, or Mir Abdul, as he was otherwise known, passed orders therein. There were also the *Foujdars* and the *Sepahsalars*,‡ who looked to the executive side of judicial administration. In all cases, civil or criminal, the aggrieved party had the right of appealing to the King himself, who sat daily in the Durbari' Am and personally heard and decided all appeals. It was open to every one to state his own cause to the Emperor. The dispensation of justice was extremely summary. Bribery ruled both men and laws. There was no check on the corruption or cupidity of the Kazis and the Muftis. Devout Hindus were not seldom ordered to be beheaded on the mere pretence of their having said something against the Prophet. In fact, in religious matters the Shaikh-ul-Sadar exercised higher authority than even the King, and it was with great difficulty that Akbar succeeded in wresting spiritual powers from his hands. Jehangir, though a careless monarch, followed

* The term *Shaikh-ul-Sadar* literally means "the chief priest" (*Shaikh* = priest, and *ul-Sadar* = the chief). He was regarded as the head of all Mussulmans, and his interpretations of the "Shra," or the divine law, were supposed to be final. He could confer grants of lands, and was the head of all the Kazis in the kingdom.

† The *Meer Mahal* (*Meer* = chief, and *Mahal* = street) was a sort of Bazar Chowdhri, who settled all petty disputes. Though not a judicial officer in the strict sense of the term, he wielded an authority which was something more than merely quasi-judicial.

‡ *Foujdars* (meaning those who hold an army) and *Sepahsalars* (heads of armies) were military rather than judicial officers. Their services were constantly requisitioned for the collection of revenue, but they performed other duties as well. And although they were supposed to look after the executive side of judicial administration, they not seldom poached on the province which was, strictly speaking, the Judge's.

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in his father's footsteps in dispensing impartial justice to his people. But Aurangzeb, who was a rigid Moslem, decided everything in strict conformity with Mahommedan law, according to which there can be no courts of justice except those established for the administration of the *Shra*, or the divine law. Both Akbar and Jehangir administered what is known as customary law, though it was open to the *Ulema*, or the clergy, to decide ecclesiastical matters according to divine law. But if there was some show of justice at the seat of government, no system of judicial administration worth the name could have been established in Bombay and generally in the Western Presidency, where Moslem sovereignty was practically non-existent at the time. It is true that we hear of a Kazi at Thana, the headquarters of their kingdom in the fourteenth century, to look after the civil affairs of the place. Whether there was a Kotwal and a Foujdar as well to administer criminal justice, there are no means of ascertaining. Even if there were, they could hardly have been kept busy. The administration of justice under the Moguls in those days must have been extremely lax. They were then too much occupied with territorial aggrandisement to think of internal administration. They could not attempt the consolidation of their dominion before acquiring a sure footing on it. It was the Malik and not the Kazi who reigned supreme. There is evidence to show that the fountain of justice under the Moslem rule was far from being pure. Hamilton, who has written an interesting account of the East Indies, but who is not said to be absolutely reliable on all points, seems to be right here. "The Mahometans," he observes, "have the law in their hands and distribute justice best to those that pay best for it. The judge's fees are 25 per cent. on all sums that he pronounces due to the party whose plea is best supported with bribes or interest, for the justice of a cause seldom prevails." * In this connection it is interesting to note, incredible as it may seem, that the suitors at the Mayor's Court, established by the Crown in 1726, were charged with commission on the decision of their suits and that such commission was actually appropriated by the members of the Court. More incredible still is the fact that when the immorality, or

* *A New Account of the East Indies*, by Captain Alexander Hamilton, i. p. 163.

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rather the illegality, of the practice was pointed out to them, they rose in open revolt!

Let us now glance at the period of Portuguese sovereignty over Bombay and its neighbourhood. It was, as is well known, Vasco de Gama who, by doubling the Cape of Good Hope in 1497, opened the way to the East Indies. Portugal was then a mighty empire, and its citizens were actuated by the spirit of enterprise which was abroad in Europe at the time. By their perseverance and skill they soon contrived to monopolise the trade to the East Indies, and for a time succeeded in keeping out the other European nations which had followed their lead. At the beginning of the seventeenth century the Portuguese had, among their other possessions in the East Indies, the fort of Diu in Gujarat, a fortified factory at Daman and another at Dabul, the town and castle of Chaul, the city of Bassein, the island of North Salsette and the town of Thana. We hear of them in Western India early in the sixteenth century, but their possession of Bombay may be said to date from the cession of the island in 1534 by Sultan Bahadur of Gujarat. By the Treaty of Bassein of that year, not only the island of Bombay but the city of Bassein with its dependencies, Thana, Bandora and the island of Mahim, became Portuguese territory.* Bombay was then composed of seven villages, subordinate to two *caçabês* or chief stations, at which customs duty was levied. These villages were Mahim, Parel, Varella (Vadala) and Syva (Sion) under the caçabê of Mahim, and Mazagaon, Bombaim and Varel (Worli), under the caçabê of Bombaim.† Most of these villages were leased at that time. Mr. Edwardes surmises,‡ and with good reason, that the lack of pecuniary resources, due to the difficulties which the Portuguese had to contend against, may have necessitated the grant of lands as rewards for meritorious services. In 1548 we find that the *Ilha da Boa Vida* ("the Island of the Good Life"), as the Portuguese styled Bombay, was made a gift of by the King of Portugal to Garcia da Orta, an eminent Portuguese physician of the period, on payment of a quit-rent. The famous Manor of Mazagaon was actually created by a Royal Charter and Letters Patent. Mazagaon was at that time a district by itself, and not subordinate

* Edwardes' *Rise of Bombay*, p. 68.
† *Ibid.* p. 72. ‡ *Ibid.* p. 69.

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to Bombay. Indeed, Bombay was then considered less important even than the island of Mahim. It had not then attained the distinction of a caçabê: it denoted merely the island whereon once stood the shrine of the old Hindu goddess Mumbadevi * (from which many derive the word "Mumbai" which was eventually anglicised into "Bombay").† It only remains to observe here that under the Portuguese the juridical constitution of the island was feudal, and the lord could claim the military services of the tenants. In short, the tenure of land at the time reflected the spirit of the age.

A survey of the administration of justice under the Portuguese would be both interesting and instructive for our purpose, but there is a strange dearth of materials. Dr. Gerson da Cunha devotes nearly two hundred pages of his *Origin of Bombay*—a book which displays much research and learning—to a detailed description of the Portuguese period of the history of Bombay, but there is hardly any reference in it which throws the requisite light on their administration of justice. The learned doctor refers at some length to the Portuguese tenure of land in Bombay —a subject which will be considered in its proper place in this volume—but he says little or nothing as to the way in which his adventurous countrymen administered civil and criminal justice in the *Ilha da Boa Vida*. The necessity for such a survey, however, is minimised by the fact that, according to Perry, C.J., there is not the least vestige of Portuguese law or Portuguese courts in Bombay at any time after the cession of the port and island by the King of Portugal to Charles II.‡ "The broad fact remains," says he, "that the English law was introduced into Bombay at the date of the cession, and has

* Edwardes' *Rise of Bombay*, p. 92.

† The etymological derivation of "Bombay" from "Boon-Bay," good harbour, about which Fryer seems so positive, has been generally discredited. Sir George Birdwood also discredits the derivation of the place-name "Bombay" from a supposed Portuguese form "Bom-Bahia," which he characterises as "bad grammar and altogether unhistorical." Writing to the *Times* on the subject recently, Sir George observes: "Bombay, in Mahratti, Mumbai, that is, 'Sister Mum,' takes its name from the primitive tutelary of the island, Mumba Devi, 'the Goddess Sister Mum,' whose temple formerly stood on the Esplanade, but was transferred in the eighteenth century to the native town. The name 'Bombay' therefore means 'the Town and Island of Our Lady Mumbai.'"

‡ *The Advocate-General* v. *Richmond*, Perry's Oriental Cases, 573.

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since prevailed." This is fully borne out by the remarkable distinction between the stipulations contained in the Marriage Treaty of 1661 as to Tangier and those as to Bombay, to which attention was drawn by Sir Michael Westropp in his most elaborate and learned judgment in *Naoroji Byramji* v. *Rogers*.* By the terms of this treaty both Tangier and Bombay were ceded to Charles II., but whereas, in the case of the former, the then existing laws and customs of the place were reserved to it by a distinct stipulation, there was no such reservation in favour of the laws and customs of the inhabitants at large, or Portuguese inhabitants in particular, of Bombay.† But were it otherwise, it seems doubtful if the English would have inherited any code of laws and customs from the Portuguese. It is true that the period of their sovereignty over Bombay extended over nearly a century and a quarter (from 1534 to 1661), but they could not have enjoyed much peace during that time. Ever since they forced Sultan Bahadur of Gujarat to sue for peace, the Portuguese remained embroiled with the Mahomedans. The Dutch lost no time in following them to the East Indies, and thus added to their difficulties. The English, too, must have caused them much anxiety and annoyance from about the middle of the seventeenth century. So that the Portuguese had but little leisure for the consolidation of their power in India, and even less inducement properly to look after the internal administration of the territories under their sway. We do hear of the Judge Ordinary, Manoel da Silva, the attorney Antonio da Costa Raposo, the Mayor of the city, Vicente Rebello d'Almeida, and the Factor and Magistrate, Amaro de Azavedo, who, with others, witnessed, on behalf of the Crown of Portugal, to the act of the possession and delivery of the island of Bombay to the English about 1665.‡ The services of one Semao Serrao were at this time engaged by Sir George Oxenden to settle certain land disputes between the Portuguese and the English, probably because he was well read

* Bombay High Court Reports, iv. p. 1.

† Cf. the absolute supersession of Spanish law in Jamaica (and, after a melancholy period of utter confusion, in Trinidad) and that of French law in St. Vincent. Dutch law has been more fortunate in British colonies. Very few cases of an amalgamation exist. Either the old law is utterly abolished or (as in St. Lucia and Quebec) English law gains no footing whatever.

‡ Da Cunha's *Origin of Bombay*, p. 261.

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in the civil and imperial laws. There is, however, one little incident which throws a lurid light on the administration of criminal justice under the Portuguese. We hear of a man named Antonio de Sa, son of a priest and a nun from the city of Porto, who was charged with two homicides in Bassein, but, as the Magistrate would take no notice of his crime, he went about unmolested.* We actually hear of the Relação, or the Supreme Court of Judicature, in Bassein about the middle of the sixteenth century.† The Portuguese must have established a Court of Judicature in Chaul also. Da Cunha testifies to its existence in his *History of Bassein and Chaul* in the following words:

"A little in front of these ruins (of the Church of the Augustins) are the remains of the court-house of Chaul. It must have been a large building, and its *Ouvidor*, or judge, was elected by the people of Chaul —a privilege which was conceded to them after the fashion of that enjoyed by the inhabitants of Goa in 1697. The duties and rights of this obsolete order of judicial functionary are graphically described in the *Instituto Vasco da Gama* (vol. iii. p. 162)."

But the Relação at Bassein must have been a much more imposing structure, and certainly a far more important sanctuary of justice, than the Court in Chaul, for during more than two hundred years that Bassein remained in the possession of the Portuguese, it gradually rose to a state of grandeur and opulence that earned for it the appellation of "a Corte do Norte," or the chief city of the north. It will not be out of place to mention here some of the principal officers upon whom devolved the administration of justice in Bassein and Chaul. "Next to the Factor," says Da Cunha in the book referred to above, "came the Ouvidor or Judge, whose salary was 100,000 reis a year.‡ Then there was the 'Meirinho,' a police officer, whose business it was to apprehend criminals, his salary also being 100,000 reis. Then followed 'Alcaide do Mar,' or sea-bailiff. Then there was the King's Solicitor and the 'Provedor da Defunctos' or

* *Origin of Bombay*, p. 94.

† It is said that the ruins of a Court of Justice can still be traced in the picturesque fort at Bassein, which was built by the Portuguese in 1532.

‡ One thousand Portuguese reis are equivalent to a little more than two rupees.

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administrator of intestates."* Garcia de Orta, the famous physician mentioned above, refers to this Relação in a letter he wrote from Bassein to King D. Joao III., dated December 24, 1548.

"'His remarks,' says Da Cunha, 'are pregnant with useful hints, which give an insight into the manners and customs of the Society of that time. He believed that since the establishment of this Court, there had been more processes in law, and that wherever there were such law-courts and lawyers, there were always more law-suits and more strife. He advised the substitution of the courts by *mesas* and *mor alçada*, that is, boards of arbitrators or courts of jurisdiction under civil magistrates.'" †

Garcia da Orta's fear of the increase of law-suits and strife with the establishment of law-courts and the advent of lawyers is well borne out by the experience of three centuries!

The paucity of records illustrative of the history of judicial administration during the Portuguese sovereignty of Bombay does not necessarily reflect any indifference shown towards perhaps the most important department of government by this once powerful European nation in the East. That there must have been records kept in the Relação both at Goa and Bassein seems certain. Even at the present day the archives of the High Court of Goa must be full of interesting documents unfolding the history of the rise and fall of the Portuguese empire in the East Indies. Some of them have been collected and published, but there are many more which have seen no other light, for years past, than the dim light of the record-room. Possibly many of the records were carried away to Portugal, and are preserved to this day as precious heirlooms of an historic past; more probably a large number of them must have been destroyed, either wantonly by those who brought about the decline, and ultimate decay, of Portuguese sovereignty in India, or by still more destructive agents—the moth and the white ant.

* *History of Bassein and Chaul*, p. 221. Da Cunha also adds, quoting Gemelli Careri: "The Government is in a Captain, as they call him, or governor, and the administration of justice in a Vedor and the Disembargador, who is a gown-man (probably a doctor of laws), and Judge of Appeals from all the Vedors of the northern coast, along which in every city there are factors and treasurers for the revenue of the Crown of Portugal."

† *Origin of Bombay*, p. 111.

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No wonder, then, that even those books which deal exhaustively with the period during which the Portuguese reigned supreme in India have little to say about their judicial administration. One of them, the most recent, we believe, speaks of the time when the island of Bombay was leased to Garcia da Orta, the eminent Portuguese physician and scholar. Its author, Count de Ficalho, throws some light on the administration of justice at that time, and as his account appears to combine originality with accuracy, we shall take the liberty of gleaning a few interesting facts from it.*

It seems that, in the sixteenth century, the system of judicial administration under the Portuguese was very simple, it being entrusted to a General-Justiciary, who was assisted by a few subordinate officials. Who these officials were, and what were their duties, it is difficult to say. The *Ouvidor* seems to have been one of them. *Ouvidores* were the magistrates of the districts of Goa, who had the power to entertain and dispose of all cases, civil as well as criminal. They held, virtually, the same position in India as did the *Corregedores* and the *Provedores* in Portugal. Appeals from the decisions of the Ouvidores, in all cases where an appeal lay, were, before the establishment of the High Court of Goa, heard by a Chief Judge, called the *Ouvidor-Geral*. Judicial officers of the higher grade, such as the Judges of the High Court or of the Privy Council, were styled *Desembargadores*. There were also the Juizes Ordinarios (*i.e.*, ordinary or common judges of the people), who were generally appointed for the term of one year. They were the subdivisional judges of a district, but subordinate to the Ouvidores, who were empowered to hear all appeals from their decisions, and who were generally appointed from the class of men who had made law their special study, though exceptions were made to this rule by an order issued by the King of Portugal in 1628. This order is included among the documents

* A Portuguese weekly published at Goa, called *A India Portuguesa*, recently gave passages from this interesting book, under the heading "Garcia da Orta, e O Seu Tempo, pelo Conde de Ficalho." Chapter VII., which deals with Goa, gives a brief survey of the administration of justice under the Portuguese, and was published in its issue of September 14, 1905. I have been able to gather some materials from it, with the help of the Portuguese translator and interpreter of the High Court, Mr. A. X. D'Souza, who has kindly translated this portion for me.

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collected by M. Garcia, a Judge of the High Court of Goa, and published in two volumes in 1872. The order may be roughly translated as follows:

"To Dom Francisco Mascarenhas, Viceroy of India, Friend. I, the King, send you greetings. I recommend that when you have to fill up the posts of 'Ouvidores' of the Forts of this State, and which used to be filled up by lawyers and in accordance with my ordinances, passed [competent] lawyers may be appointed to the same, they being preferred to others, and if there be no lawyers available, then persons of age, fit to administer justice, should be appointed. They shall fill these posts for three years, and so also shall the Captains act for three years, even though they are appointed for life. Written at Lisbon this the 5th day of April, 1628." *

A system which combined simplicity with efficiency worked well so long as the Portuguese held limited sway in India; but when they overthrew Mahommedan supremacy and established themselves firmly (at least on the western coast), the necessity for the introduction of an improved system of judicial administration became apparent. A Supreme Court of Judicature was established at Goa, several new posts were created and men of law and learning were imported from Portugal. But paradoxical as it may seem, this improved system was found to give less satisfaction to the people than the one it replaced. It lacked simplicity and despatch, and the introduction of Portuguese laws and intricate rules of procedure made it singularly ill-suited to the requirements of the native population. The semi-barbarous people who came under the Portuguese sway required justice which combined promptitude with strict impartiality. The European processes of law, introduced into a country ignorant of legal formalities, were beyond the comprehension of the subject races, and the venality of those who executed them formed a powerful incentive to corruption in the country. Such, at least, seems to be the opinion of those who were in India when Portuguese supremacy was at its height in the East. For instance, a Jesuit priest, in his *Oriente Conquistado*, says:

"The judicial system of our courts and the ordinary procedure of law, devised to govern Europeans, a people possessing more love for truth, a greater sense of shame and more honest in their dealings, are not useful

* *Archivo da Relacao de Goa* (1601–1640), No. 503.

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in India except to foment injustice and to drain the pockets of the litigants. . . Our laws make the Hindus all the more litigious and deceitful than they naturally are."

We quote this testimony only to show that the establishment of the Supreme Court of Judicature at Goa was premature. The verdict of this Jesuit writer is supported by some of his contemporaries who are equally outspoken in their condemnation of the so-called improved system of judicial administration. Simao Botelho, a man who commanded influence both with Government and the public, wrote to the King in 1547:

"About the Supreme Court established by your Highness in these parts, the general complaint is that the legal business is transacted with less despatch than before."

Another eminent citizen, D. Joao de Castro, was even more emphatic:

"The Supreme Court of India," he wrote about the same time, "is the most unnecessary thing that can possibly be, and in my opinion very prejudicial to this country and still more to your Highness' service, for these men of law who come here as Justices enter upon their duties in such a state of starvation and so burning with avarice and desire for amassing wealth, that they cherish no other purpose."

De Castro's mean opinion of the men of law is borne out by independent testimony. The men who were sent by his Majesty of Portugal at that time to carry on the administration of justice in his Eastern possessions must have come out in the dual character of lawyers and adventurers—more, perhaps, in the character of adventurers than lawyers. Even at the commencement of the sixteenth century the inhabitants of Goa bitterly complained of there being too many advocates, solicitors, and agents, who, they said, "rejoice in law-suits which provide them the means wherewith to satisfy their gluttony [avarice]." De Castro had openly to condemn the conduct of a judge, by name Hieronymo Rodrigues, who, he said, "is so wanton, so bold, and so shameless, that I am astonished he was not known as such there [in Portugal]." It should, however, be added, in fairness to these men of law, that they had often to perform

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their duties in the teeth of bitter opposition and under circumstances which, in a way, excited their cupidity and partiality. The *hidalgos* or the grandees in India could not divest themselves of the notion, long-cherished by their forefathers in Portugal, that they could hang a king's officer who dared enter their demesnes and manors without their express permission, even though he did so only in the performance of his judicial duty. They refused to submit themselves to the restraints prescribed by law, and, in consequence, often came into conflict with the authorities. There is at least one typical instance to illustrate what we have stated above. It seems that one Antonio de Macedo, who was the General-Justiciary of Goa at the time, went to arrest a criminal who had taken refuge in the house of an influential Portuguese gentleman, by name Diogo de Silveira. When the latter returned from Mass, he became quite furious, as his servants had not offered any resistance to the Judge, and walked about the streets clamouring that they ought to have "plucked the beard of that brat of a Jew whom his Majesty had sent out to India as General-Justiciary!" Strange to say, even the then Governor of Goa, Nuno da Cunha, is said to have openly sided with Diogo de Silveira!

This is all the information that we have been able to gather from the scanty materials at our disposal. It gives one but a faint idea of the state of judicial organisation under the Portuguese in the sixteenth century, not in the town and island of Bombay, but in Bassein and Goa. For these were the two principal cities in which the power and prestige of the Portuguese in Western India were centred. As has been observed elsewhere, Bombay, now the second city in the British Empire, was then considered a very insignificant little place, hardly known to the adventurers from the West. For long it remained in the possession of a wealthy Portuguese landlord, and continued to be under the jurisdiction of Bassein till the arrival of the English. On the other hand, Goa and Bassein had each a Relaçao to supervise the judicial administration of the districts subordinate to them. What the constitution of these Courts was, and in what manner justice was dispensed to those who sought relief from them, it is well-nigh impossible to say. Certain rules and orders, imported from Portugal with the necessary amendments to suit the require-

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ments of an Oriental country, were laid down for the guidance of judges and other officers of the court. Some of these rules, with other interesting documents relating to the administration of Goa, have been collected and published by M. Jose Ignacio de Garcia, in the two volumes referred to above, and those whose accomplishments include a knowledge of the Portuguese language, and who are curious enough to know more of the subject, may profitably turn to the pages of the *Archivo da Relaçao de Goa.* More pertinent to our purpose, however, are a set of rules framed in 1586 for the guidance of the Ouvidores of the Portuguese Forts in India. These rules seem to have been embodied, with many others, in what is known as the "Red Book of the High Court of Goa," still preserved in the Relaçao. Thanks to the courtesy of Dr. Alberto Osario de Castro,* who was but lately the Procurer-General of the Court of Appeal of Nova Goa, we have been able to get a long extract from this book. A literal translation† of these rules, which define the duties, powers and privileges of the learned Ouvidores of the various Portuguese Forts in the country, is given below. It is worth noting that, as stated in this order, Bassein was included among the Forts in which these rules were to be enforced, and as Bombay was then subordinate to Bassein, the rules must have been applicable to the Ouvidores of Bombay—if there were any such officers at the time. The extract from the "Red Book" runs as follows:

"RULES FOR THE LEARNED OUVIDORES OF THE FORTS OF INDIA.

"Philip, by the grace of God, King of Portugal and of the Algarves on the hither side of and beyond the sea in Africa, and Lord of Guinea, &c. I hereby make it known to the Viceroy that now is and may hereafter be, of the parts of India, that whereas there is an obligation imposed upon me to have justice administered to my subjects, and whereas it is very important for the good administration of justice that it should be administered by men of learning and (good) conscience, I have commanded that trustworthy Ouvidores, selected by the Board of the

* I am obliged to Dr. Alberto Osario de Castro, not only for this interesting extract, but for other useful information regarding the state of judicial administration in Western India under the Portuguese. The learned doctor is a great-grandson of the second Ouvidor-Geral of Goa.

† My acknowledgments are again due to Mr. D'Souza for translating these

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Desembargadores* of my Privy Council be sent to some of the Forts of India† which are mentioned in my Provisions, and that they shall observe the following rules:

"I. The said Ouvidores shall, within the local limits of their jurisdiction, take cognizance of and inquire into all cases, both civil and criminal, and shall, sitting alone, at the conclusion of civil cases heard in their respective courts, pronounce judgments, admitting appeals to the Relaçao in cases which shall be beyond their jurisdiction; and the appeals which are by virtue of my Ordinances admitted against their interlocutory judgments shall be preferred to the High Court instead of to the Ouvidor-Geral, as was hitherto done.

"II. And the said Ouvidores shall, sitting alone, conduct the proceedings in criminal cases, and as soon as such proceedings shall have been concluded they shall inform the Commanders (of the Fort) of the same, and appoint a day and hour to meet in the house of the municipality of the town in order to pass a sentence, and should there be no such house, the Ouvidores and the Commanders shall meet in the Forts; and in case the Ouvidor and the Commander agree, a sentence shall be passed which shall be written by the Ouvidor and signed by both and duly executed, if the same be within their jurisdiction; and in case they differ, no sentence shall be passed, but a third person shall be called in, who shall be the *Vedor da Fazenda* (Controller of Revenue), and in his absence the *Feitor* (Factor or Administrator) of the respective Fort, and in case either of them is prevented from any cause, the senior *Juiz Ordinario* who shall be holding office that year shall be summoned in lieu of them, and sentence shall be passed according to what shall have been agreed between two of them, and it shall be signed by all the three and be duly executed in the manner aforesaid.

"III. And in criminal cases in which an appeal shall lie, the said Ouvidores shall, in conformity with my Ordinances, allow an appeal to the Relaçao, where the Ouvidor-Geral shall finally dispose of the same.

"IV. To the said Ouvidores shall lie all appeals from the decisions of the *Juizes Ordinarios* of the towns and cantonments situate within the local limits of which they are Ouvidores, and they shall dispose of the same, sitting alone; they shall also allow appeals to the Relaçao in those cases which are beyond their jurisdiction (*i.e.*, when the case admits of a second appeal).

"V. And the said Ouvidores shall hear appeals preferred by the Juizes Ordinarios and orphans in the same manner as the Corregedores and Provedores of the Districts hear them, and transfer to themselves such cases as the said Corregedores and Provedores can do under the rules governing them; and in everything else they shall observe the said rules

* As has been already noted, judges of the higher grade, such as the Judges of the High Court or the Privy Council, were called *Desembargadores*.

† According to a marginal note made in the "Red Book of the Relaçao," it would seem that the Forts of India referred to here included those of Mozambique, Ormuz, Diu, Bassein, Cochin and Malacca.

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for the Corregedores and Provedores of the Districts as far as the same shall be applicable.

"VI. They shall grant Warrants of Protection and Security in cases in which the Corregedores of the Districts can do so, and the Captains of the Forts shall not grant the same, nor shall they interfere in the matter in any way; and the said Ouvidores shall not issue such Warrants in case of death nor in cases reserved for the Ouvidor-Geral of the Criminal Court, who is governed by the rules made for the guidance of the Corregedor of the Court, except that the Ouvidores of Mozambique, Ormuz, Malacca, Moluco, and Macau shall grant such Warrants in all cases; and in cases in which the Corregedor of the Court grants such Warrants in the Relaçao under the rules made for his guidance, the said Ouvidores shall issue such Warrants after hearing the opinion of the Captain as well as of the *Vedor da Fazenda*, and if there be no Vedor da Fazenda, the *Feitor* shall be called in for the disposal of the case, and where both the Vedor and the Feitor are prevented from taking part, the senior Juiz Ordinario holding office that year shall be called in in their place; and it shall be sufficient that two of them agree to grant or refuse to grant such Warrants; and the relief granted to the applicants shall be enforced in the presence of the said Ouvidores. And I have been pleased thus to order, having regard to the distance which lies between these (Forts) and the city of Goa, where the High Court is situated, and the vexation that would be caused if parties had to go to such a distant place in order to lodge their applications.

"VII. In Civil Causes the said Ouvidores shall exercise jurisdiction, in cases of movable property, up to 40,000 reis, and in cases of immovable property up to 80,000 reis, and those of the Forts of Mozambique, Ormuz, Malacca, Maluco, and Macau shall have jurisdiction up to 80,000 reis in cases of movable, and 70,000 reis in cases of immovable property; and in all cases exceeding the said amounts an appeal shall lie to the Relaçao.

"VIII. And in Criminal Cases the said Ouvidores sitting with the Commanders shall exercise the same powers which are exercised by the Commanders of my possessions beyond [the seas?] as declared in the Ordinance of Book II., Title 47, both over the Portuguese and the natives, and the sentences passed by them, in cases falling within their jurisdiction, as defined by these rules and the aforesaid Ordinance, shall be duly executed.

"IX. And as regards any of the cases mentioned in the aforesaid Ordinance, under which their jurisdiction is extended to cases of natural death, any sentence that shall be passed by them shall not be put into execution where the convicted persons are esquires, knights of my household or noblemen of a higher rank, but before it is executed the same shall be reported to the Viceroy and put into execution in conformity with his directions.

"X. And the said Ouvidores shall have power to award punishment which may involve the imposition of fines to the extent of 2,000 reis for defraying the expenses of the Court, and no appeal shall lie from such cases.

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"XI. And the said Ouvidores shall not issue warrants of arrest in any case without taking summary evidence in the first instance, in accordance with the provisions of the new law for the reform of justice, which they shall observe in this as well as in all other particulars dealt with by the same.

"XII. They shall hold such sittings as the Corregedores of the Districts are obliged to hold in public places where the judges usually hold their sittings, and not in their private residences.

"XIII. And the said Ouvidores shall examine witnesses in all cases in which the Corregedores of the Districts are bound to do so under my Ordinances, the *Extravagants** of this kingdom, and shall be liable to the penalties contained therein where the same shall be applicable.

"XIV. They shall have power, under the Extravagants, to fill up judicial posts which may have fallen vacant, until the same are filled up by the Viceroy, and such appointments shall not be made by the Commanders.

"XV. And the said Ouvidores shall cause a book to be kept by each of the clerks of their respective courts, wherein shall be registered all the civil and criminal cases, appeals, and other matters of which the said Ouvidores shall have taken cognizance, each of the clerks entering in his book such cases only as shall have been assigned to him, and which may have been instituted not only by the Crown, but also by parties.

"XVI. And each of the said Ouvidores shall keep a book numbered and signed by him, wherein he shall cause to be entered all the fines expended by him in defraying the expenses of the Court, or in paying the same to the opposite parties in conformity with the Extravagants.

"XVII. These expenses shall be incurred by the orders of the said Ouvidores and not of the Commanders, and on the said Ouvidores resigning their offices, accounts shall be taken of such expenses and fines in order to ascertain whether the fines have been paid to those to whom they were awarded and whether the expenses sanctioned by them were reasonable.

"XVIII. And the said Ouvidores shall not be liable, during the tenure of their office, to be arrested or summoned before a Court in either a criminal or civil case, except under the orders of the Viceroy or of the Relaçao.

"XIX. And inasmuch as it is important for the good administration of justice to invest the said Ouvidores with the authority which it is expedient to attach to offices which are bestowed upon them by me, and inasmuch as from the subordination of the said Ouvidores to the Commanders there arose many difficulties [inconveniences] and the said Ouvidores became so oppressed as not to be able to discharge their duties with integrity and freedom, I am pleased, in my desire to remedy this evil, to command that the said Commanders shall exercise no juris-

* *Extravagants* are said to be certain Portuguese laws enacted from time to time without any method or arrangement, as the exigences called them into being. Hence their name.

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diction or authority whatsoever over the said Ouvidores nor shall they interfere in any matter which shall be within the province of the said Ouvidores.

"XX. And in the event of the said Ouvidores committing crime or excesses which the Commanders should think proper to report to the Viceroy, they shall do so by means of letters which the Viceroy shall submit to the Relaçao in order to proceed against them according to law.

"XXI. And the said Ouvidores shall affix their signatures [take fees for signing?] as the Corregedores of the Districts do, according to their rules and my Ordinances.

"XXII. And in the event of any of the Ouvidores, from absence or some other cause, being prevented from personally discharging his duties, he shall have power to appoint a person to discharge the duties in his stead; and in the event of his dying without making such appointment, the *Vedor da Fazenda* shall discharge such duties, and there being no Vedor or he being prevented, the Feitor; and these persons shall act until the Viceroy shall have filled up the vacancy, as aforesaid, and the Viceroy in selecting a person shall have regard to his learning and other qualities becoming the office; all such persons shall be guided by these rules.

"XXIII. And as regards the proceedings instituted against the said Ouvidores suspected * in any cause or action of which by virtue of their office they shall be entitled to take cognizance, I am pleased to direct that the same shall be conducted in the following manner. As soon as such proceedings as aforesaid shall have been instituted by any party of whatever rank or condition, the Ouvidor not admitting the suspicion imputed to him shall remit the papers and proceedings relating to the case in which he is so suspected, to the senior *Juiz Ordinario*, who shall have held office the preceding year, for the disposal of the same according to law; but the said Ouvidor shall nevertheless proceed with the case in which such proceedings were instituted, till judgment, sitting jointly with one of the judges for that year who shall be holding office in the Fort of which he is the Ouvidor, provided that the said judge is not challenged as suspected; and he being challenged, some other judge shall be selected, and both being suspected, the senior member of the municipality shall be called in, and he too being challenged as suspected, the next senior member shall be called in, and the second also being challenged, the third shall be summoned, who shall not be challenged as suspected; and I further command that the acts done by them in this behalf shall be held valid as if no proceedings as aforesaid had been instituted; and in case the said Ouvidor if adjudged as not suspected, he shall proceed with the case alone as he would have done if no such proceedings as aforesaid had been instituted; but if the suspicion imputed

* These were a peculiar kind of judicial proceedings taken against a judge by any party to a cause who seeks to transfer the case from that judge, on the ground of his partiality, prejudice, or personal interest in the case.

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to him be proved, he shall not proceed with the case any further, but another judge shall be appointed in his place who shall dispose of the case in conformity with my Ordinances.

"XXIV. And so I am pleased to direct that when in the manner aforesaid any of the said Ouvidores shall have been challenged as suspected, and the party challenging shall not be satisfied with his evidence and should desire to adduce further evidence, such party shall deposit 4 Crusados before he is allowed to adduce the said proof, which amount he shall forfeit for the benefit of the pauper convicts of the gaol of the Fort situate within the local limits of the jurisdiction of the said Ouvidor, if he shall be adjudged not suspected.

"XXV. The said Ouvidores shall get 200,000 reis a year as their stipend,* which amount shall be paid to them at the Factories of the respective Forts in which they shall have been serving, by the Factor at every quarter of the year, and the said Factor shall make these payments in the first place (*i.e.*, before defraying other expenses) in order to secure to the said Ouvidores a good remuneration, upon their respective clerks certifying the business done during the quarter; and upon the production of such certificates and receipts of the said Ouvidores, the accounts of the Factors of the moneys disbursed in such payments shall be passed. And a copy of these accounts shall be registered in the Factories by their respective clerks. This pay shall be drawn by the learned Ouvidores alone.

"XXVI. And the said Ouvidores shall get allowance for the maintenance of two men who shall attend upon them and serve them on judicial business; and such allowance shall be paid to them every quarter out of my Treasury as has hitherto been done, on the production of a certificate from the clerks of the respective Factories showing on what business the said two men are employed by the said Ouvidores and whether they serve in the manner aforesaid.

"I am pleased to command that these rules be henceforth put in force in the manner stated therein, and that the said Ouvidores shall observe them in spite of any other rules to the contrary. And these rules shall be entered in the Books of the Relaçao and the Registers of the Fort. I hereby make it known to the Viceroy of the State of India and to the Desembargadores of the Relaçao and to the Captains and Ouvidores and to all official courts and persons of those parts, and command them to observe and follow these rules and cause the same to be observed and followed in every particular as herein contained, without any demur or objection whatever, for such is my wish. Written by Pero de Seixas, at Lisbon, on the 28th of February in the year of the birth of Our Lord Jesus Christ 1586."

* By an earlier order, dated 1552, the salary of the Ouvidor was fixed at 100,000 Reis. Da Cunha mentions this amount in his book, from which we have already quoted. It would seem that by this order the Ouvidor's salary was doubled.

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There is yet another reason why the Portuguese records are silent about the administration of justice. The Portuguese ventured out to the East Indies with two main objects in view, namely, the establishment of trade and the propagation of Christianity, or, to be strictly accurate, the propagation of Christianity and the establishment of trade. The policy adopted by them during more than a century of their sovereignty over Bombay and other parts of India may be conveniently summed up in the historic remark of Vasco de Gama, "*Vimos buscar Christaos e especiaria*" ("We come to seek Christians and spices"). Notice the preference given to *Christaos* over *especiaria*. This was the keynote of their policy—and it also proved their ruin. Hardly had they set foot in India when they began to make converts of the natives, not so much by means of persuasion as by force of arms. Soon after landing on this island, they commenced the destruction of Hindu temples and constructed their own churches on the *débris*. Little wonder, then, that the Portuguese did not endear themselves to the inhabitants of Bombay.

"Had the Portuguese Government," observes Mr. Edwardes, "been able to restrain the troublesome and wanton acts of oppression which their religious orders occasionally practised under the cloak of proselytising zeal, the population of Portuguese territory would not only have not decreased, but might also have increased simultaneously with an increase of the island's trade-relations."*

As long as there was no rival in the field all went well with the Portuguese. But such a state of affairs could not last long. The Jesuits became arrogant with their wealth and the unlimited power they exercised, and they even went so far as to deny that the King of Portugal was lord of his possessions in India, openly neglected his mandates, and generally intrigued against the Government to which they were properly subordinate.† They also arrogated to themselves magisterial powers, and, in defiance of the courts of justice, dealt out penalties to members of their congregations before their churches. Portuguese trade consequently deteriorated, for converts were preferred to spices. It was not the Flag which went before the Cross, but

* *Rise of Bombay*, p. 75. † *Ibid.* p. 80.

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the Cross swept everything before it. The religious zeal of the Jesuits often brought the other European nations in India into trouble. On one occasion they captured two vessels belonging to certain Moors and made prisoners of the whole crew. "The prisoners," wrote a Jesuit father at the time, "were all sentenced to death, and six died without any one asking them if they would exchange the Koran for the Gospel." Such treatment alienated not only the subject races from the Portuguese, but estranged even the Dutch and the English from them. The policy of the English in this respect stands out in marked contrast to that of the Portuguese. Ever since they set foot on Indian soil they have shown the greatest respect for the religious beliefs of the natives. They have even tolerated their superstitions and refrained from interfering, as far as possible, with their customs. In illustration of this, there is an interesting passage in a letter the Company wrote to the Court of Directors in 1650, when the Portuguese had incurred the displeasure of the natives of their establishment at St. Thomé, because one of their padres there had refused to allow a Hindu procession to pass by his church. Referring to the impracticability of overcoming the religious prejudices of the natives, they observe:

"By this you may judge the lyon by his paw, and plainely discerne what small hopes, and how much danger wee have of converting these people, y^{t} are not like ye naked and brut Americans, but a most subtle and politique nation, who are so zealous of their religions or rather their superstitions, y^{t} even amongst their owne differing castes, is grounded an irreconcilable hatred, wch often produceth very bloodie effects."*

The English judged wisely "the lyon by his paw," and their judgment has stood them in good stead to this day.

The question has been asked more than once: Why did the Portuguese, who were earlier in the field, fail to establish an empire in India while the English have so well succeeded in accomplishing this object? To this the late Sir William Hunter gives the following convincing reply:

"The Portuguese," says he, "had neither the political strength nor the personal character necessary to maintain such an Empire. Their

* Bruce's *Annals of the East India Company*, i. p. 455.

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national temper had been formed in their contest with the Moors at home. They were not traders but knights-errant and crusaders who looked on every pagan as an enemy of Portugal and of Christ. Only those who have read the contemporary narratives of their conquests can realise the superstition and cruelty with which their history in the Indies is stained."*

The Inquisition also did considerable harm to the Portuguese Empire in the East. The King of Portugal had himself to complain to the Viceroy "of a very common practice in India to shoot people without the Courts of Justice putting a stop to it." Both Fryer and Hamilton testify to the unspeakable torture and cruelty to which the natives of India were at times subjected by the Portuguese. Speaking of their prisons and executions, Fryer writes:

"Going the next morning to the Palace stairs, we saw their Sessions house, the bloody prison of the Inquisition; and in a principal market-place was raised an engine a great height, at top like a gibbet, with a pulley, with steppings to go upon, as on a flagstaff, for the *Strapado*, which unhinges a man's joints; a cruel torture." †

Hamilton is more plain-spoken still:

"The religion," says he, "established by law, is Romish, and here are the most zealous bigots of it; and the Laws of the Church (but not of their country) are rigorously observed, and there is a severe Inquisition Court to punish any whom the Inquisitors have the least suspicion of, which awes both clergy and laity to such a complacency that I question if there is such a pack of notorious hypocrites in the world." ‡

But let us drop the curtain over this period, which is stained with the blood of innocent natives. A country which prefers converts to spices, and which attempts to govern its foreign possessions by the laws of the Church rather than by those of the State, cannot exercise a long-lived supremacy. The wonder is that Portuguese sovereignty in the East Indies lasted for so long as a century and a quarter.§

* *Imperial Gazetteer of India.*

† *Travels in the East Indies and Persia*, by Dr. John Fryer, p. 155.

‡ *A New Account of the East Indies*, by Captain Alexander Hamilton, i. p. 250.

§ It is but fair to add, however, that the Portuguese seem to have improved in the eighteenth century, and the administration of justice under them had

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Before following the English into India and tracing the slow process by which the foundation of the British Empire was laid at Surat, let us glance at the trend of events in England in the latter part of the sixteenth century. The discoveries made in the preceding century in mathematics, physics, and astronomy facilitated distant navigation, and the practical results may be traced in the discovery of America by Columbus, and that of the route to India by Vasco de Gama. These brought large accession of strength to Spain and Portugal, and the spirit of enterprise which had made these events possible soon made its way to England. There it found a congenial soil, for commercial associations sprang up to facilitate experiments for extending the trade of the realm. Great was the activity of commerce during the reign of the "Virgin Queen," and the expeditions of Drake and Cavendish stimulated the spirit of enterprise. Wild stories of the fabulous wealth of India, and the success of the Portuguese and the Dutch in the East Indies, induced some adventurous Englishmen to turn their thoughts eastward. As early as 1589 several London merchants presented a memorial to Queen Elizabeth for permission to send out three ships on a voyage to India, and although the petition was favourably received at the time, it was not till ten years later that an association was actually formed and a charter of privileges granted. Elizabeth was quick enough to see that the object which the merchants had in view would bring England into collision with the other European nations in the East Indies, with whom the English were then on friendly terms. It was probably due to her sagacity that the condition was imposed in the Charter of 1600 that the East India Company was not to interfere with the factories or trade of the European

then become more humane and their laws were divested of much of their unnecessary harshness. Such, at least, seems to be the opinion of a writer who has recorded it in the following terms: "The reforms then lately made in the management of the affairs of that nation (the Portugueze) had rendered them a much more respectable power than they had been; their marine was increased, both in number and the size of their ships; the Inquisition was abolished, and liberty of conscience given to all that settled at Goa or in its dependencies; the useless riches of the churches were declared to belong to the King, and were applied to public uses; the administration of justice was put on a firm footing, and carried on by persons sent from Lisbon, unconnected with the inhabitants of Goa."—*An Historical Account of Bombay* (1781), p. 73, footnote.

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nations in alliance with England. At a general meeting of the Merchant Adventurers held on September 24, 1599, a resolution was passed to apply to the Queen for her royal assent to a project "intending for the honour of their native country, and the advancement of trade and merchandize within the realm of England, and to set forth a voyage this year to the East Indies, and other islands and countries thereabouts."* Policy, however, appeared to counsel delay, as a treaty was then pending between England and Spain. Just one year after, another general meeting of the Adventurers was held at the Founders' Hall, at which it was agreed "that, for the honor of their native countrie, and the advancement of the trade of merchaundize, they have undertaken to sett forth a voiage for the discovery of the trade of the East Indies"; and having obtained the Queen's consent, they boldly set forth on their adventurous voyage. Among the preliminaries that were settled we may notice only one. It was decided that the factors were each to give security for their fidelity, and that they should abstain from all *private trade*, that being deemed, even at that early stage, the most fruitful source of breach of trust. The events that will be described later will show how well-grounded this fear was, and how many a brilliant career was wrecked by men succumbing to this temptation of prohibited private trade. We need not dwell at any length on the constitution of the East India Company, or the different voyages it undertook for the honour of its country and the advancement of trade. Suffice it to note that the direction of the Company's business, under the charter, was entrusted to twenty-four committees, under a Governor, and that these committees were the immediate predecessors of what was afterwards better known as the Court of Directors. But after it was united into one corporate body, and the privilege of exclusive trade was conferred by legislative authority, the supreme power was vested in the Court of Proprietors, who were assisted by a number of committees. This Court wielded legislative power, and all laws and regulations, all determinations of dividend, and all grants of money, were made by it. Of the several committees, the most important for our purpose was that of law-suits, whose business it was to deliberate and direct in all cases of litigation, and to examine the bill of law-

* Bruce's *Annals*, i. p. 111.

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charges. Mill expresses surprise that there should be work of this description sufficient to engross the time of this committee; it certainly could not have been overworked when the Company was yet in its infancy. There is an amusing incident which is worth noticing in this connection, for it throws a flood of light on the independence of the newly-formed Company and on the ideas and aspirations of the times. When the Company was about to send out an expedition to the East Indies, Government suggested the employment of Sir Edward Michelbourne. But the Company, though yet in its cradle, objected to the appointment, not because Sir Edward was unfit for the post, but because he happened to be a *gentleman!* They stated it as their resolution, in all seriousness, "not to employ any *gentleman* in any place of charge," and requested "that they may be allowed to sort their business with men of their own qualitye, lest the suspicion of the employm[t] of *gentlemen* being taken hold uppon by generalitie, do dryve a great number of the adventurers to withdraw their contributions."* Happily, our idea of a *gentleman* has been much enlarged since the formation of the East India Company!

Let us now examine some of the more important provisions of the Charter of 1600 which brought into being this world-famous Company. Bruce observes in the preface to his *Annals* that the East India Company was recognised, by a series of Acts of the Legislature, to have a real property in their chartered rights, "which are perpetual, and with succession." † This recognition may be said to date from the grant of the first charter. From the spirit and terms of this charter, it would appear that the "London East India Company trading to the East Indies"—to give the Company its full title—was created a body corporate capable, by the laws of the realm, of purchasing and holding property as real rights, and of suing or being sued for the same, in all competent courts of law, and that, as such, they were to be held legal proprietors. The most valuable privilege which was granted to the Company was that of the exclusive right of trading between geographical limits which were practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other. This is neither the

* Mill's *History of India*, i. p. 23.
† Bruce's *Annals*, i. p. vii.

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place nor the occasion to question the legality of such a privilege.

"Neither at the beginning nor at the end of the seventeenth century," observes Sir Courtenay Ilbert, "was any doubt entertained as to the expediency, as apart from the constitutionality, of granting a trade monopoly of this description. Such monopolies were in strict accordance with the ideas, and were justified by the circumstances, of the time." *

It was nearly a century later that the exercise of this prerogative was formally declared to be illegal as transcending the powers of the Crown. There is only one restriction placed on their exclusive right of trading, which is already noticed, namely, that in the exercise of this right the Company were not to interfere with the corresponding rights which other European Powers might have acquired in the East Indies, so as to give rise to disputes between the Queen and her European allies. Even this limitation establishes the right of the Company to acquire factories, or seats of trade, from any of the Native Powers or States to whose dominions they might resort, and it was by virtue of this right that the Company entered into a treaty with the Chief of Acheen in 1602 and with the King of Bantam in 1603. Although the Company's right of trade was exclusive, they were at liberty to grant licences to traders. Unauthorised traders were made liable to forfeiture of their goods, ships, and tackle, and to "imprisonment and such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient."

We have noticed above some of the important clauses of the Charter of 1600, dealing with the constitution and privileges of the East India Company. But there is one more provision which grants the Company certain legislative powers and in which may be traced the earliest judicial authority vested in the Company, even before they acquired any territory. As this is, for our purpose, perhaps the most important clause in the famous charter, we reproduce it here. The whole charter is given in Birdwood and Foster's *First Letter-Book of the East India Company* (1600–1619), and this particular clause, which

* Ilbert's *Government of India*, p. 9.

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will be found at page 175 of that treasure-house of early records relating to the Company, runs as follows:

"AND further o^r will & pleasuer is and by theis presentꝙ for vs o^r heires and successors we doe graunte vnto the said Gourno^r & Company of m^rchauntꝙ of London trading into the East Indies and to their successors, that yt shall & may be lawfull to and for the said Gourno^r & Company of m^rchauntꝙ of London tradinge into the East Indies & their successors from tyme to tyme to assemble themselues for or aboute any the matters, causes, affaires or busines of the said trade in any place or places for the same convenient during the said terme of ffifteene yeares w^thin o^r dominions or elswheare, & there to hold Courte for the said Companie and the affaires thereof, & that alsoe yt shall & may be lawfull to & for them or the more p^te of them being soe assembled, & that shall then & theare be present in any such place or places whereof the Gourno^r or his deputie for the tyme being to be one, to make, ordeine, & constitute such and soe many reasonable lawes, constitucõns, orders & ordenaunces as to them or the greater p^te of them being then and theare present shall seeme necessarie and convenient for the good gournm^t of the same Companie & of all ffactors, mr^s, Mariners & other Officers ymployed in any of their voyagꝙ, and for the better advauncement & continuance of the said trade and traffique, and the same lawes, constitucõns, orders and ordenaunces as by them or the greater p^te of them shall be thought necessarie being soe made to putt in vse & execucõn accordinglie, & at their pleasuer to revoke or alter the same, or any of them, as occasion shall requier, and that the said Gournor & Companie soe often as they shall make, ordeine, or establish any such lawes, constitucõns, orders & ordenances in forme aforesaid shall & may lawfullie ympose, ordeine, lymitt, & p^uide such peines, punishmentꝙ and Penalties by ymprisonm^t of bodie, or by fynes or amercementꝙ or by all or any of them vpon & against all Offenders contrary to such lawes, Constitucõns, orders and ordenances or any of them as to the said Gournor & Companie for the tyme being, or the greater p^te of them then & there being present, the said Gournor or his Deputie being alwaies one, shall seeme necessary, requisite and Convenient for the observacõn of the same lawes, constitucõns, orders, and ordenances, & the same fynes, & amercemtꝙ, shall and may levy fyne, take & haue to the vse of the said Gournor and Companie & their successors w^thout the ympedim^t of vs o^r heires or successors or of any the Officers or mynisters of vs o^r heires or successors, or w^thout any accomp^t to vs o^r heires or successors to be rendered or made. All & singular wch lawes, constitucõns, orders, and ordenances soe as aforesayd to be made we will to be dulie observed and kept vnder the peines and penalties therein to be conteyned: Soe alwaies the said lawes, Con-

That the Comp: may assemble in any convenient place.

Authoritie to make reasonable lawes by the greatest part of a genrall assembly.

To punish offenders eyther in body or purse soe as the same be not contrary to the lawes of the Realme.

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stitucons, orders, ordenancq, ymprisonmentq, fynes and amercemtq be reasonable & not contrary or repugnant to the lawes, statutes or Customes of this or Realme."

It was thus ordained that the Company might assemble themselves in any convenient place, "within our dominions or elsewhere," and there "hold court for the Company and the affairs thereof," and, being so assembled, might

"make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them, or the greater part of them being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages and for the better advancement and continuance of the said trade and traffic."

Cowell points out that they were also empowered to put in use and execute such laws, "and at their pleasure to revoke and alter the same or any of them," as occasion shall require.* They might also impose such pains, punishments, and penalties by imprisonment of body, or by fines and amerciaments, as might seem necessary or convenient for the observation of these laws and ordinances. *But their laws and punishments were to be reasonable, and not contrary or repugnant to the laws, statutes, or customs of the English realm.* We have italicised the last words in the legislative clause of this charter, for they seem the most important, and recur in several subsequent charters granted to the East India Company. This power to legislate, which, by the way, contains no express reference to factories or territories, as was pointed out by Sir Michael Westropp in the case already referred to, was, therefore, strictly limited. And under the circumstances in which the servants of the Company found themselves in India—their position being extremely anomalous, for although their factories were part of the dominion of the Mogul, their own law was made applicable to them—such a precaution would seem to be absolutely necessary. The Company, or their agents in India, could make laws and bye-laws of their own, but these were to be reasonable and not contrary or

* *The History and Constitution of the Courts and Legislative Authorities in India*, by Herbert Cowell (Tagore Law Lectures), p. 13.

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repugnant to the laws of England. This will be a convenient place to inquire as to what was meant by this oft-recurring phrase in the early charters. What were the exact meaning and import of the restriction placed on the legislative powers of the Company? We need make no apology for quoting at length the learned exposition of this proviso as given by Mr. Sergeant Spankie, who was for several years Advocate-General at Calcutta. Sergeant Spankie, while arguing, on behalf of the Bengal Government, an important appeal against a rule, regulation, and ordinance issued at Fort William on April 4, 1823, for regulating the press at Calcutta, observed:

"The meaning of the qualification 'not being repugnant to the laws of England' is, that laws to be made by the Colonial legislatures shall not contradict the laws of England in cases for which the law of England has provided, for that would be a power to repeal the laws of England. They shall not introduce anything so absurd as a *conflictus legum*, by the inferior legislature enacting anything contrary to what the supreme legislature has enacted in the same matter. They shall not enact anything that is contradictory and repugnant to the general laws and statutes of the realm, meant for universal application, and founded on principles of permanent imperial policy. But where the law of England is silent, where local circumstances demand local remedies, where the ends of good order and civil government require new laws, the local legislative power is competent to enact such laws for the public safety, and the legislative authority was granted to afford a prompt and present remedy in unforeseen cases, for which the laws of England had not provided."*

It may be supposed that, under the legislative and judicial authority granted by this charter, the Company must have enacted certain laws for the good government of their territories in India. But it is doubtful if any such laws, rules, or regulations were made. None seem to have been published, and no trace of them now exists. The agents of the Company were for the most part concerned with the development of their commercial interests at the time; they were probably well occupied with preserving their trade monopoly and resisting interference with it. As we have already noticed, the charter was granted to the Company before they had any territorial possession in India; they had first to acquire territory before availing them-

* Auber's *Analysis of the Constitution of the East India Company*, p. 23.

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selves of either their judicial or legislative authority. Moreover, some driving power was required to set this bare authority in motion.

"Unless supplemented by judicial and punitive powers," says Ilbert, "the early legislative powers of the Company could hardly have been made effectual for any further purpose. But they are of historical interest, as the germ out of which the Anglo-Indian codes were ultimately developed." *

How ineffectual these powers were is testified by the fact that, although the Company were empowered to punish offenders by fine or imprisonment, this authority proved insufficient for the punishment of grosser offences and for the maintenance of discipline on long voyages. The Company were, therefore, obliged to seek an expedient. "They were in the habit," says Ilbert, "of procuring for each voyage a commission to the 'general' in command, empowering him to inflict punishments for offences such as murder or mutiny, and to put into execution 'our law called martial.'"

One of the earliest instances of such a commission is recorded at p. 48 of Birdwood and Foster's *Letter-Book*. A commission was issued to Henry Middleton, Esq., who was sent out on a voyage to the East Indies in 1601. The following passage occurs in the commission:

"We doe heereby straightlie chardge and Commaund all & eury ꝑson & ꝑsons ymployed, vsed or shipped in this voyadge, in any of the said ships, to giue all due obedience and respect vnto you dureing the said voyadge, & to beare them selues therein one towardes another in all good order & quietnes for avoideing any occasion that might breede Mutinie, quarrells or discention amongest them to the hindraunce of the good suckcess wch is to be hoped for by Godꝯ prouidence of the said intended voyadge, & in default of such dutie and obedience to be ꝑformed towardes you & for the correccon & quenching of all such Mutenie quarrells or discention, that shall or maye growe or be moued by the disorder, euill dispoticon or ꝑversnes of any of the said ꝑsons. We doe heereby aucthorize you Henrie Middleton Genra^ll^ dureing the said voyadge or dureing soe longe tyme as you shall liue in the said voyadge. And in Case of yor decease wch God forbid, we doe then likewyse hereby aucthorize you the said Christopher Colthurst, to chastice correct and ponnish all Offenders and Transgressors in that behalfe according to the qualitie of their Offences wth such ponishm^t^ as are

* Ilbert's *Government of India*, p. 10.

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Comonlie vsed in all Armyes by Sea when the offences are not capitall. And for Capitall Offences as wilfull murder wch is hatefull in the sight of God, or mutenie wch is an offence that maie tend to the ourthroue of the said voyadge, the same being trulie & iustlie proued agaynst any of the pson or psons aforesaied. We doe heereby giue vnto you the said Henrie Middleton during all the tyme of the said voyadge, or dureing soe long tyme as you shall liue in the said voyadge. And in Case of yor decease we doe giue to you Christopher Colthurst full power and aucthoritie to vse and putt in execution o^r^ lawe called Martiall in that behalfe and theis o^r^ l^res shall be vnto you sufficient warrante and dischardge for the doing & executeinge of all & singular the p^r^misses."

Similar commissions were issued to Captains Best and Downton, but in investing the latter with "full power & authoritye to use & put in execution our law called Martiall lawe" the following significant provision was made: "But that therein you doe expresly use the advise & counsell of the two principall Masters & of the two principall Merchants appoynted for the tyme being, or of any two of them."

It must not be supposed that the commission was granted merely for the sake of formality. It was enforced, and the commissioners were empowered to punish and execute offenders by martial law. Kaye gives an instance of a sentence of capital punishment awarded to an offender under one of these commissions. It will be interesting to cite it here, not merely because it illustrates the power vested in the commissioners, but also because it is, perhaps, the earliest authentic account of judicial proceedings in India under the *régime* of the East India Company. This is how the record runs:

"Consultations held on board the ship *Charles*, dated Swalley Road, Feb. 28, 1616. Present Captain H. Pepwell, Chief Commander of the Fleet, &c.

"Whereas Gregory Lellington had on Sunday the 16th of February last past, in or near the town of Surat in the dominions of the Mogul, killed Henry Barton, Englishman, and belonging to the Company of the good ship the *James*, then riding in or near the road of Swally, it was concluded by the Council aforesaid, that the said Lellington should be called to answer for the said murder; which being effected, the King's Majesty's Commission, under the Great Seal, in point of authority and power to punish and execute by martial law, where need required, was read publicly before the prisoner and that done it was laid to his charges as followeth." (Here follow the list of offences with which he was charged.) "Wherefore the said Gregory Lellington being convicted by his own

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confession, it was generally resolved on, that as well in respect of the offence itself as for example and prevention of others in the like, that he should suffer pains of death whereof he received judgment by the mouth of the Chief Commander which was (according to his own desire), that he should the next day be conveyed ashore, and by the musketeers of the guard be shot to death—and so the Lord have mercy upon his soul. Signed *Henry Pepwell* (Chief Commander of the Fleet). *Thomas Kerridge*, Chief of the Factory, &c."—MS. India House Records.*

It may be noted here that, although in regard to all the transactions with the native inhabitants the English were subject to the judicial tribunals of the country, they had no great liking for the native courts and a violent dislike for Moslem justice in particular. Whenever possible they took the law into their own hands and settled disputes in conformity with their own laws. Cowell mentions that when the English, before the end of the seventeenth century, built fortifications at Madras and Calcutta and were there settling down, the Nawab was about to send a Kaji, or Judge, to administer justice to the natives, but that the Company's servants bribed him in order to abstain from this proceeding! †

This method of punishing culprits for gross offences by the issue of commissions *under the Great Seal*—whether legal or not—was followed for only a short time, when, by a royal grant, the power of issuing commissions embodying this authority was given to the Company, subject to a proviso requiring the verdict of a jury in the case of capital offences.

By Letters Patent dated December 14, 1615, the Company were empowered to grant commissions to their commanders (under a seal expressly appointed for that purpose), conferring upon them the power to punish offenders, &c. "This," say Birdwood and Foster in a footnote at p. 493 of their *Letter-Book*, "obviated the necessity of obtaining a royal commission for this purpose for each voyage, as had formerly been the practice." The Letters Patent form one of the most interesting documents in this book, and we take the liberty of reproducing the following passage from it:

"To all to whome this present writinge shall Come to be seene read or heard. The Gouerner and Companie of Merchantꝙ of London

* Kaye's *Administration of the East India Company*, footnote at p. 66.

† *Constitution of the Courts in India*, p. 16.

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tradinge into the East Indies, send greetinge in our Lord God everlastinge. Whereas our most gratious Soveraigne Lord Iames by the grace of God of England, Scotland, ffrance and Ireland, Kinge defendr of the faith, &c., duely waighinge and Consididringe [*sic ?*] that noe voyage or enterprize wherein multitude of menne of seurall qualities and dispositions are to be vsed and employed, Can bee performed and accomplished wth hope of good successe except some amongst them bee sufficientlie authorized to restraine and punish mutinous and disorderlie persons accordinge to their desert, by his Highnes Lres patent bearinge date the fourteenth daye of December in this Thirteenth yeere of his Raigne of England, ffrance and Ireland, and of Scotland the Nine and fortieth, At the humble suite of the said Gouerner and Companye gratiouslye tenderinge the good successe of their voyages into the said East Indies, hath giuen and graunted vnto the said Gouerner and Companie full power and authoritye at all tyme and tymes then after to nominate, Chuse and employ in any and every their voyages then after to bee made, one or more Captaines or principall Commaunders to rule and governe all and everie his highnes Subiectq in such voyages in due obedience for the observinge and executinge of all such good orders and constitutions as the said Companie shall thinke meete to ordaine and make for the furtherance of such voyages and to give Comission direction and Instruction vnto the said Captaines and Comaunders for their owne Carriage as also for punnishinge of offenders in the said voyage, And that such Captaines and Comaunders so nominated Chosen and employed to goe on the said voyagq haueing Comission and direction from the said Gouerner and Companye vnder the seale of the Companie appointed for that purpose shall haue full power and authoritye for punnishinge offences and executinge of Marshall Lawe, namely, to Chastize Correct and punnish all and every such person to be emploied in such voyages wch shall not give dewe obedience, and respect towardq the said Captaines and principall Comaunders, or not beare them selues one towardq another in good order and quietnes, for avoydinge of any occasion that might breed quarrell or dissention amongst them to the hindrance of the good successe, wch is to be hoped for by Godq providence in any such voyage accordinge to the qualitie of their offences wth such punishmtq as are comonlye vsed in all Armyes at sea when they are not Capitall, and for Capitall offences as wilfull murther and mutinye wch may tend to the overthrowe of such a voyage the same beeing iustly and truely proued against any the person or persons aforesaid to vse and put in execution the Law Called Marshall Law, And Neurtheless by the verdict of twelue of the Companie sworne therevnto for the tryall of such offenders, as to such a case appertaineth And the said Leres patentq to bee a warrant, and discharge for the doeinge of all and everie the premisses; His Majestye thereby strictly charginge and Comaunding the said Captaines or principall Commaundrs so to bee Chosen and

Commission at large from ye Compie, to their Capne & cheife Commandr vnder ther broad seale,

first giuen to Capne Newport in ye *Hope*.

employed to followe and punctuallie to obserue in all thinge such Comission instruction and directions as they shall receaue from the said Gouerner and Company vnder the foresaid seale and in noe wise to Contrarie the same as they will answeare the Contrary at their perrills."

We have omitted to mention the charter granted by James I. in 1609, which merely confirmed, in almost identical language, the provisions of the charter of 1600, the only difference being that whereas the charter of Elizabeth had granted to the East India Company the enjoyment of its privileges for the term of fifteen years, the charter of James I. made this enjoyment perpetual, subject to certain conditions. The next charter worthy of note is that mentioned by Sir Michael Westropp, of which he was unable to procure a copy. This was dated February 4, 1622, empowering the Company "to chastise and correct all English persons residing in the East Indies and committing any misdemeanour either with martial law or otherwise."* In spite of these additional powers the agents of the Company in India often found themselves helpless adequately to punish the guilty. This was an age of lawlessness everywhere. Even in the best regulated countries in Europe the science and art of government were so imperfect as to be unequal to the suppression of heinous crimes. The increase in the number of their settlements and the disorderliness of their servants drew the Company's attention to the need for further coercive powers. So, in 1624, the Company applied by petition to the King for authority to punish their servants abroad by martial as well as common law. Accordingly, James I., by a grant in the same year, gave the Company the power of issuing commissions to their Presidents and other chief officers authorising them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.† This grant

* *Naoroji Byramji* v. *Rogers*, 4, Bombay High Court Reports, p. 28.

† May not Sir Michael Westropp be referring to this grant when he speaks of the charter of 1622? The provisions in both appear to be almost identical. This surmise is strengthened by the fact that the learned judge, who has been most careful in tracing the judicial and legislative authority of the East India Company from the first charter of 1600, was not likely to omit an important grant like that of 1624. His most able and informing judgment

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would seem to have armed the Company with sufficient authority to enforce obedience in their servants in India. But in 1651 we again find them presenting an address to the Council of State, praying that powers might be given, under the Great Seal of England, to their Presidents and Councils in India to enforce obedience in all Englishmen resident within their jurisdiction, and to punish offenders conformably to the laws of England, on the ground of their having been for years without proper authority to enforce obedience in the English subjects within their limits.* The next important charter which strengthened the constitutional and legislative powers of the Company was that granted by Charles II. in 1661. It conferred on them new and important privileges. They were given "power and command" over their fortresses, and were authorised to appoint governors and other officers for their administration. The Governor and Council of each factory were empowered "to judge all persons belonging to the said Governor and Company or that shall be under them in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly." And the chief factor and Council of any place for which there was no Governor were empowered to send offenders for punishment, either to a place where there was a Governor and Council or to England. Moreover, the Company were empowered to erect fortifications, and "to transport and carry over such number of men, being willing thereunto, as they shall think fit," to govern them in a legal and reasonable manner, to punish them for misdemeanour, and to fine them for breach of orders. They might also seize unlicensed persons and send them to England,

in *Naoroji Byramji* v. *Rogers* is a monument testifying to his great learning, industry, and research in the realm of law. It is said that Sir Michael sometimes gave offence to the profession by what appeared to be undue delay on his part in delivering judgment in important cases, and there was an amusing story current at the time that, in one instance, the learned judge handed over his judgment from the gangway of a homeward bound steamer on board of which he was a passenger. But his judgment in *Naoroji Byramji* v. *Rogers*, which covers more than a hundred closely-printed pages of the fourth volume of the Bombay High Court Reports, affords a telling answer to the critics who attributed the delay to dilatory habits on the part of the then Chief Justice. Only a lawyer can appreciate the value of such a judgment.

* Bruce's *Annals*, i. p. 459.

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punish persons in their employment for offences, and in case of their appealing against their sentence, seize them and send them as prisoners to England, there to receive such condign punishment as the merits of the offender's cause should require and the laws of the nation should allow.* This is one of the most important of the early charters granted to the East India Company, for it actually created courts of justice in British India, directing, as it did, that the Governor and Council, not only of the factories and centres of trade which the London Company then possessed, but also of those which they should subsequently acquire, should be courts of justice in *all* causes, civil and criminal; and that the laws to be administered in those courts, not only to the persons belonging to the Company, but also to "persons who shall live under them," should be "the laws of this kingdom"—*i.e.*, England.†

Let us now hasten back to the western coast of the Indian peninsula. Soon after the Portuguese founded settlements in India, rumours of the great wealth amassed by some of them led the English to venture out to the gold-laden East. As early as 1563 we hear of one Master Cæsar Frederick somewhere about Cambai and also at Ahmedabad, but he seems to have had an inhospitable reception, for he was plundered by the natives and managed to escape in the same state of nature in which he was ushered into the world. We tread on firmer ground when we make the acquaintance of Thomas Stephens, a Jesuit, who arrived at Goa in 1579 and lived there for many years. It was probably the letter he wrote at home, descriptive of the gorgeous pageantry of the Eastern Court and the excellent prospects of trade in the Indies, which gave a fresh stimulus to adventurers in England. In 1583 Leedes, Ralph Fitch, John Newberry, and some others landed at Goa. The Portuguese were extremely jealous of outsiders, and particularly of those who were bent on trade. The strangers were made welcome in a prison, for rumour had gone abroad that they were commercially inclined! But as the Portuguese preferred the propagation of their faith even to the prosperity of their trade, the Englishmen were "examined whether they were good Christians or no," and, as they did not hesitate to tell a lie, their Christianity

* Ilbert's *Government of India*, pp. 17–18.

† *Naoroji Byramji* v. *Rogers*, 4, Bombay High Court Reports, p. 29.

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was approved.* Soon after this, the East India Company was formed and several missions were sent out, all on commerce bent. Mildenhall was sent out by a commercial association in 1599, with the object of obtaining a firman from the Emperor, authorising the English to trade in his dominions, and Captain Hawkins also came out with a similar object. The latter had a message to deliver to the Great Mogul from King James, and after overcoming the jealousy of the Portuguese and the perils on the way, he was at last able to stand in the august presence. The wily monarch affected to be much flattered, but instead of granting a firman, offered the hawker-ambassador a pension and a wife from his well-stocked harem—to both of which temptations, we regret to say, Hawkins easily succumbed. But let it be said to his credit that he remained true to the interests of his country, as also to his Indian wife. In the meanwhile, the factors at Bantam, the earliest English factory established in India, recommended that trade should be opened with Surat and Cambai, and no time was lost in establishing a factory at Surat. Captain Best fought a desperate naval battle at Swally about 1612 and routed the Portuguese. It was this victory which, according to some, is said to have laid the foundation of the British Empire in India. The Emperor was much impressed with the prowess of the English, and sent Best a firman authorising his countrymen to trade at Surat. This wise Englishman, making the most of his opportunity, stipulated in a treaty with the Mogul that "in all questions, wrongs, and injuries that shall be offered to us and to our nation, we do receive from the judges and those that be in authority speedy justice, according to the quality of our complaints and wrongs done us, and that by delays we be not put off or wearied by time or charge." † The factors at Surat spread their net wide, for we find them, even at that early stage of their settlement, both at "Baroche" (Broach) and Ahmedabad. Best was followed by one Captain Downton, another intrepid Englishman, who, with the true John Bull instinct, wanted a beef-market to be established at Swally. He must have been considerably surprised on being told that this was not possible, as the *banyas* of the place had paid a large sum of money for the preservation of animal

* Anderson's *English in Western India*, p. 4.

† Kaye's *Administration of the East India Company*, p. 65.

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life. Here is another proof of the considerateness which the English, even at the beginning of their career, showed for the susceptibilities of the natives—though, in this instance, the *banyas* must have found the privilege a dear pennyworth. The next incident of importance which deserves a passing notice in this rapid review of events is the famous embassy of Sir Thomas Roe in 1615. Much has been written on the subject, and the ambassador himself has left a valuable account of his visit to the Great Mogul. It will suffice to note that this was the first real embassy, and that Sir Thomas Roe was the first ambassador in the sense in which the term is understood to-day. By a lavish distribution of cheap presents, consisting chiefly of pictures and looking-glasses, knives and sword-blades, gloves and nightcaps, and by a wonderful display of patience, sagacity, and judiciousness, Sir Thomas succeeded beyond expectation. He was sent with a double object: to arrange for the terms of a treaty, and to recover, if possible, large sums of money due to the Company from persons at the Mogul Court. It was only in 1618 that a treaty was finally concluded, the most important clauses of which, for our purpose, being that the English should enjoy the free exercise of their religion and be governed by their own laws, and that in any disputes between the English and the natives reference was to be made to the Governor and his officers, who should decide speedily and justly, but disputes among themselves were to be decided by their own factory.* In 1652, another factor was sent from Surat to apply to the Mogul for protection against the Dutch. He, too, succeeded in his mission and obtained a *firman*, two of its provisions being that the servants of the Company were to be permitted to recover their debts agreeably to the laws of their country, and that, in the event of death, their property was to be preserved and delivered to the representatives of the Company.† The solicitude of the English to be governed by their own laws is noticeable in almost all their treaties with Native Princes. The example of the Ottoman "capitulations" was ready to hand, and Europeans had probably learnt, even at that early date, to appreciate native justice at its true value. Not that they themselves conformed strictly to the letter and the spirit even of their own laws. The men who then came out to build up the British Empire in

* Bruce's *Annals*, i. p. 204. † *Ibid.* p. 472.

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India, or rather to increase the trade of the Company—for an Empire in India was probably not even dreamt of at the time—were mostly men of mediocre ability. The early chapters in the history of the British Empire in India are, according to Anderson, "annals of mediocrity and weakness, sometimes of drivelling baseness." Little wonder, then, that affairs in India at the time were far from satisfactory, and that the administration of justice was at a discount. Kaye well describes the situation in his well-known work thus: *

"We traded," he says, "we conquered, we governed. It was long before this matter of government came very palpably before us. At first, all that we had to do was to govern ourselves, and this we did in a very loose manner—rather according to laws of power and impulses of passion than to principles of justice and reason."

About this time the Company found it most difficult to compete successfully, on a footing of individual adventures, with the Portuguese and the Dutch. It thereupon resolved that voyages should be on the joint-stock account, hoping thus to give a more efficient organisation to the trade of England with the East. This, however, only served to intensify the opposition of the Dutch. The interest taken in the affairs of the Company by the English people at this time finds a parallel only in the indifference shown by them to the efforts of their merchants to establish trade relations with the East Indies. There occurred an event, however, which stirred the patriotic spirit of the whole country in support of the interests of the Company. This was the Massacre of Amboyna, in 1622, which has left a blot on the history of the Dutch in the East Indies. According to Sir George Birdwood, this event is the real turning-point in the history of the rise and progress of the British Empire in India. The plan of this massacre seems to have been carried out with deliberate cruelty, and the latent cause of it was the bitterness of feeling which then existed between the Dutch and the English. The Dutch Governor first made the unfortunate prisoners confess, by subjecting them to slow torture, and then executed Captain Towerson, nine English factors, nine Japanese, and one Portuguese sailor. The memory of this incident long rankled in

* *Administration of the East India Company*, p. 64.

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the hearts of the English both at home and in India; and it is worthy of note, as evidencing the tardy course of justice, that the Company was unable to obtain redress, in spite of repeated petitions, till more than thirty years afterwards.

We have already seen how the English factory at Surat was established in the beginning of the seventeenth century, and how it gained strength, thanks mainly to the efforts of Best, Downton, and Roe. It would be interesting to describe the manner in which the factors conducted the business of the English house, and how they kept control over the other factories in India subordinate to it. For convenience' sake, however, we shall reserve this for another chapter. The English factors had almost insuperable difficulties to contend against. They had to ingratiate themselves into the favour of the native Governor of Surat and his underlings. It sometimes happened that a *firman* obtained from the seat of the Mogul Empire, hundreds of miles away, was not worth the paper it was written upon in the city of Surat. The English often came in conflict with the native officials, and these conflicts at times assumed serious proportions. Then, there were the Portuguese and the Dutch, who fought every inch of the ground that was fast slipping away from under their feet. The power of the Portuguese was even then decaying, but the Dutch were still powerful. The English had enemies in their own camp, who gave the President and Council at Surat much trouble. The number of interlopers was fast increasing—a fact which did not add to the reputation of the factory. Deeds of violence and dishonesty were committed almost daily. There are cases on record which show that even the commanders of vessels belonging to the Company did not hesitate to perpetrate robberies on the high seas or on shore when they stood in no fear of retribution.* There seem to have been, at that time, no law and no decency, neither system nor uniformity. Justice was often administered in the most summary fashion, without conforming to even the essential processes of law. For instance, when a Dutch seaman had killed an English gunner, the enraged countrymen of the latter insisted upon having the Dutchman executed at once. In vain did the latter beg that the proper forms of justice might be observed. Nothing, however, would satisfy the factors but

* Anderson's *The English in Western India*, p. 32.

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immediate execution. The President of the factory seems to have had unlimited powers, which he used or abused according to his own inclination. The "General" commanding the fleet, to whom a commission was issued by the King under the Great Seal, also interfered in the affairs of the factory, to which interference the factors took strong exception. For a succinct account of the manner in which justice was administered at the English factories in India during the greater part of the seventeenth century, we must again turn to Kaye:

"Collisions," he says, "whether civil or criminal, with the natives of the country, subjected our people to the decisions of the native tribunals; and when we fell out among ourselves in matters affecting property or person, our disputes, if of the former character, were settled by the President, or if of the latter, a Court was held, under the King's Commission, probably on board one of the vessels in the roads, and the offender was dealt with as its members, consisting of the chief naval and mercantile functionaries, might determine and decree." *

For all that, the factory at Surat was growing in importance and prestige, and its fame spread throughout the Indian peninsula. The factors were *traders* then, and they remained traders for a long time to come. They had strict injunctions from their masters to remain true to their commercial mission and let territorial acquisition severely alone. But the Company was soon obliged to widen its horizon and to abide by the circumstances which forced upon it the establishment of an empire in India. In vain did it try to limit the number of its factories, for the number increased in spite of all efforts. The history of the East India Company presents the curious phenomenon of an empire which was built up, imperceptibly as it were, almost against the will of its founders.

"Expansion," says Kaye, "seemed to be the natural law which governed our position in the East. From the Bombay coast, where the Company's factors first settled themselves, they made their way by land to Agra, then rounded Cape Comorin, settled themselves on the coast of Madras, and soon stretched up the Bay of Bengal, to establish themselves in that rich province."

But although the Company's factors had first settled them-

* *Administration of the East India Company*, p. 318.

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selves on the Bombay, or rather the western coast, it took them more than half a century to make their home in the town and island of Bombay. It was as early as 1626 that the English and the Dutch at Surat unsuccessfully attempted to form an establishment on the island of "Bombaya." They were even then attracted by the secure position of the island, and as they had long felt the necessity of an isolated spot, difficult of access from outside, had cast longing eyes upon it. In 1652 the English again realised the insecurity of their position, for in case of civil war, or in the event of an enemy attacking them, their factories would be practically defenceless. So they gave it as their opinion to the authorities in England that, for a reasonable consideration, the Portuguese might allow them to take possession of Bombay and of Bassein, but it did not commend itself to the latter. They made a similar request to Oliver Cromwell in 1654, and repeated it five years after, but still in vain. It was ordained, however, that the East India Company was to get Bombay, not merely as a factory, but as an Imperial possession direct from the Crown. For in 1661 the Infanta Catherine of Portugal brought it in dower to the English monarch, and in 1668 the Crown ceded it to the East India Company.

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CHAPTER II

AT SURAT

AS, at the present day, the historic city of Surat is reduced to a shadow of its former self, mainly owing to the ravages of flood and fire, it is hard to realise that it was once the premier city in Western India, and that all the English settlements were subordinate to it in the early part of the seventeenth century. And yet the fact is so. Not only was it the first and the most important English factory in India, but, for several years, the Imperial city of Bombay was actually governed by a President and Council at Surat. It would be interesting to note the vicissitudes of power through which the capitals of the three presidencies in India have passed in the course of the history of the British Empire in the East. Bombay, Calcutta, and Madras have each in turn had the distinction of being the premier city in India. But Surat may lay claim to a greater distinction still —the distinction of being the most important and promising city in India, when Bombay, Calcutta, and Madras were hidden in three obscure corners of the Indian peninsula.

As British Empire in the East may be said to have taken root in the historic soil of Surat, an attempt to trace the growth of this city from early times will not be out of place here. The proverbial fertility of the province of Gujarat aroused Akbar's cupidity, and at the end of the sixteenth century it fell to his arms without much opposition. For nearly two centuries after this Gujarat was subject to the House of Tamerlaine. Akbar, however, concluded a treaty with the Portuguese which made them virtual masters of the Surat seas. It brought them a welcome accession of strength, and they were keenly alive to the importance and value of the seaport town at the mouth of the Tapti. But they were

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not destined to enjoy their acquisition long, for the Dutch harassed them a good deal, and the English filled their cup of woe to the brim, till in January, 1615, was fought the memorable naval battle at Swally,* when Captain Best routed the Portuguese completely and laid the foundation of the British Empire in Western India.

When the English landed at Surat they found much oppression and corruption rampant in the town. The Mogul Empire was powerful and extensive, but the very extent and greatness proved an obstacle in the way of good government. Surat was governed by an officer appointed by the Emperor, and so long as this officer could bribe the Court he could misrule and oppress the ryot with impunity. Hamilton, speaking generally of the laws prevailing in India at the time, says:

"Indeed, as to their laws, their Kings or Princes being all arbitrary, the law is lodged in their breasts, who make and repeal [them] when they please; but for the ease of [the] populace, they have national customs and courts to manage distributive justice, and that runs in a pretty even channel, when it is not interrupted by the Prince's order or stop'd by bribes to those governors or judges who have the distribution of them." †

We have already cited Hamilton's mean opinion of the Moslem method of administering justice, namely, that "they distribute justice best to those that pay best for it." It is easy to picture to ourselves the lawless and unsettled state of affairs which must have presented itself to the English on their first establishing a factory at Surat. There must have been some show of justice, no doubt, but in reality it was often worse than rank injustice. It is said of that able but cruel monarch, Mahmud Begarra, that when sitting in judgment he used to condemn criminals to death by the simple process of squirting at them the juice of the betel he was in the habit of chewing, a sentence which was carried out even before the juice had time to dry.‡ The English factors had not to wait long before they had some idea of what Moslem

* Swally was the seaport of Surat, a village situated about twelve miles west of the city. It was, at that time, an important port. Most of the letters from the Surat Council were addressed from Swally Marine.

† Hamilton's *A New Account of the East Indies*, i. p. x.

‡ Anderson's *The English in Western India*, p. 89.

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justice at the time was like. On one occasion, says Anderson, a party of dancing girls refused to appear before the Governor of Surat, as they had been ill-requited on a former occasion. The Governor administered to them justice (?) in right Moslem fashion. They were dragged into his presence and beheaded in sight of the company, which included several English factors. The latter were struck dumb with horror, but the Governor seemed to enjoy their discomfiture. Fryer is responsible for the following instance of punishment, which shows the severity of a sentence passed by the Mogul Governor. A goldsmith was found guilty of coining copper rupees, and was made to atone for the crime in the following manner:—

"First, they shaved his head and beard . . . then, putting a fool's cap on his head, they sat him on an ass with his face to the tail which is led by an Halencore (Halalcore?), and one of the drums is beat before him, which is an affront of the highest degree. . . . Being brought back to prison, they cut off his hand, and let him lye during the Governor's pleasure."

Instances like these must have considerably lowered the ideal of justice among the English at Surat, who were men of mediocre ability, and were possessed of rather elastic consciences. They were themselves lawless, and the lawlessness of the people they came in contact with could not have made them more law-abiding. Honour was at a low ebb everywhere and justice at a discount. Intemperance was rife, and the wines drunk were extremely pungent. Akbar knew their failing, for although the selling of wine was prohibited at Surat, he had ordered a decree to be published permitting intoxicating spirits to be sold to Europeans, because, as he shrewdly observed, "they are born in the element of wine, as fish are produced in that of water, and to prohibit them the use of it is to deprive them of life." We wonder if the worthy factors took this as a compliment!

Ovington says that Surat was reckoned "the most fam'd emporium of the Indian Empire." It had a large trade with many towns in India and elsewhere, and was renowned for the traffic of commodities throughout Asia. He also gives us an insight into the internal administration of the place under the

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Mogul Governor and his officers. There were, in fact, two Governors, one of whom was called the Governor of the Castle, "who is always confined a prisoner within its walls," and the other was the Governor of the City, "to whose management and care is committed the trust of all civil affairs." "He does not," adds Ovington, "peremptorily arbitrate in cases of moment, but when any matter of consequence is brought before him he seldom determines it without the consultation and concurrence of other officers of the city, the *Cogy*, the *Vacanavish*, and *Catoual*."* These were evidently the principal Mogul officers who looked after the internal administration of the place. The Cogy, or Kazi, was a person learned in the law, who acted as judge, and was consulted in all civil matters concerning the affairs of the city. The Vacanavish was a sort of public intelligencer who kept the Court informed of all important occurrences in the State. The Catoual, or Kotwal, was an officer who somewhat resembled a justice of the peace. His business it was to suppress all crimes and enormities in the city. The Kotwal's office at the time was no sinecure, for, according to Ovington, he was obliged to ride the streets at night, "attended with several peons and souldiers arm'd with swords, lances, bows and arrows, and some with a very dreadful weapon, a rod of iron about a cubit's length, with a large ball of iron at the end, which is able with ease to dash out the brains or break and shatter the bones at once." There was another officer under the Great Mogul, who, with the Kazi and the Kotwal, remains with us to-day. This was the Foursdar, or Fojdar. What the Kotwal was to the city, the Fojdar was to the country, for he used to look after the highways and prevent the commission of thefts and robberies.

After this cursory glance at the administration of civil and criminal justice at Surat under the Mogul officers, let us hasten to the English house, or factory, which was just established there. It must be noted that the first English factory in India was at Bantam, and it was the factors at Bantam who first drew the attention of the Company to the possibilities and prospects of trade at Surat. Kerridge was the first factor who opened trade with Surat in 1612, and became eventually the Chief at Surat. According to Kaye, he seems to have been a man of great integrity and ability—which cannot be said of many who

* Ovington's *Voyage to Suratt*, p. 228.

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followed him. The history of the Surat factory in the first half of the seventeenth century is more or less obscure. But there still remain ample materials which are well authenticated. Besides the Chief, or President, as he was afterwards styled, there were several factors, mostly young and inexperienced men, who looked after the business of the house. In obedience to the letter and spirit of their mission, as well as to their natural instincts, their chief concern was to increase the trade of the Company. They left the conversion of the natives to the Portuguese, the acquisition of territory to the Dutch. And it is a remarkable testimony to the character, resoluteness, and courage of the Englishmen that, while proselytising zeal wrought the ruin of the Portuguese, and the Dutch signally failed to acquire a permanent footing in India, the British merchants gradually built up an empire which excites the admiration of the world to-day. The principal officers who supervised the factory at Surat were four in number. There was first the "Accomptant," then came the Warehouse-keeper, then the Purser Marine, and, lastly, the Secretary. The last was perhaps the most important officer, in some respects next only to the President. Fryer sums up the Secretary's duties thus:

"He models all consultations, writes all letters, carries them to the President and Council to be perused and signed. . . . The affairs of India are solely under his regulation; from him issue out all orders; by him all preferment is disposed, by which the Council are biassed by his arbitrament." *

The factors were paid too little for the work they were called upon to do. The President himself was paid the princely salary of £300 a year, with the permission, says Ovington, of free trade in certain commodities, a permission which was extended to other factors also. But this seems to be inconsistent with the express provision in the early charters that the factors should not engage in private trade. The danger of such a temptation was foreseen even before the first East Indiaman set sail for these shores. Indeed, the servants of the Company were required to give security for their good faith, and undertook not to engage in private trade. But there cannot be the least doubt

* Fryer's *East Indies and Persia*, p. 84.

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that the factors, from the President down to the youngest writer, ignored this condition, and so long as a conspiracy of silence was maintained all went well with them. But in 1634 the Surat house appears to have been divided against itself, for the fraud was discovered, and the factors were called upon to give an explanation. The only explanation that they could give was a confession of their guilt, coupled with, we suppose, a solemn undertaking not to repeat the offence. The authorities, however, were at last constrained to raise the salaries of the factors, at the suggestion of that far-sighted ambassador, Sir Thomas Roe, which was conveniently ignored at the time. The President's salary was fixed at £500 a year—Captain Jeremy Blackman having been appointed President at Surat in 1650 on the higher salary, "as a compensation for not being allowed to engage in private trade"—and the factors were also paid a little more, to keep them out of the way of temptation. But in spite of these expedients, warnings, and threats, the factors long continued to derive large profits from private trade. Instances are on record where, though the fixed salary of the factor did not amount to even £100, his annual income ran into four or five figures. Occasionally windfalls came the way of the factors, and materially strengthened their financial position. For instance, early in the eighteenth century, the Surat factory having received Rs.9,05,000 by the payment of some debts which had been long outstanding, it was ordered that 5 per cent. should be presented to the Governor and 2 per cent. be divided amongst the members of Council. We have seen that the President was paid none too well for the high post he held—the highest, probably, in the gift of the Company at the time, at least in India—still he managed to live and move about like a mighty Oriental potentate. The factors, too, lived in a style which greatly impressed the people. Here is a description given by Dr. Fryer of the manner in which the President at Surat kept up the state and dignity of his office:

"The President has a large Commission, and is *Vice-Regis;* he has a Council here also, and a guard when he walks or rides abroad. . . . He has his chaplains, physicians, chyrurgeons, and domestics, his linguist and mint-master. At meals he has his trumpets usher in his courses and soft music at the table. If he move out of his chamber, the silver staves wait on him; if downstairs, the guards receive him; if he go

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abroad, the Bandarines and Moors, under two standards, march before him." *

The present salary of the Governor of Bombay runs into five figures, but even he does not enjoy a tithe of the dignity which the President at Surat claimed by virtue of his office. We are living in a prosaic age. Time seems to have worn away the picturesqueness of those early days!

It has been observed that the early founders of the Indian Empire were, with few exceptions, a set of lawless men, unprincipled and uneducated, with but a vague notion of justice and little respect for law. But it should not be supposed that the Company did nothing to bring home to the factors the serious responsibilities of their charge. Owing to the long distance between them, and a voyage which took months to perform in those days, they were helpless in keeping the unruly factors constantly under control. They tried their best to enforce the observance of certain rules and regulations which they had framed for the conduct of their affairs in the East Indies. Religion was not the strong point of the English factors at Surat, and the Company were painfully conscious of the fact.

"Lest all the care and instruction of a minister," writes Ovington, "might be inavailable for reclaiming the dissolute and refractory among the English, the Company have interposed their own authority, and publisht their orders and injunctions in these following words: 'The Governor, Deputy, and Committees of the East India Company, having been informed of the disorderly and unchristian conversation of some of their factors and servants in the parts of India, tending to the dishonour of God, the discredit of the Gospel of our Lord Jesus Christ, and the shame and scandal of the English nation: And being desirous as much as in them lies, for the future to prevent the like, and reduce all their people in their several Factories and Colonies not only to a civil, but also to a religious and pious comportment, that may render our nation honourable, and the religion we profess amicable in the sight of those heathens, among whom they reside: Have thought fit to require and enjoin a strict observation of the ensuing rules and orders, to which they do expect from all their factors and servants a due compliance.'"

Here follow certain rules enjoining a strict observance of the Sabbath and of public and private prayers. But more interest-

* *East Indies and Persia*, p. 68.

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ing to us are the following rules, orders, and injunctions framed by the Company and published under their authority:

"That the Agents and Chiefs in their several Factories take care to prevent all profane swearing, and taking the name of God in vain by cursed oaths; all drunkenness and intemperance, all fornication and uncleanness, and that if any will not be reformed, and do not abstain from these vices, but after admonition and reprehension, shall be found guilty again, that then such punishment shall be inflicted on them, consistent with the laws of God and this Kingdom, as the Agent and Council shall find their crime to deserve, and that if after such punishment inflicted, he or they will not amend, or be reformed, then the Agent is strictly enjoined and required to send home for England by the next ships such person or persons so unreclaimable, that they may not remain in India, to the dishonour of God, the scandal of religion, the discredit of our nation, and perverting of others."*

From the above quotation it will be seen how strict were the injunctions, and how zealous were the Company for the honour of God, the observance of religion, and the credit of their nation. The Council at Surat, and also at Bombay and other places, seem to have availed themselves freely of the option, or rather the strict injunction, of sending home factors past reclaiming, and the early records teem with instances of those who were thus summarily sent back. As regards the religiousness of the factors, Anderson says that where the execution of human laws was so vague and uncertain, the milder influences of religion were the more required. It is the common experience of humanity that men think of their Creator most when they are in difficulty, or when they are about to launch upon an enterprise. So it was with the English at Surat. Kerridge and his companions seem to have been a pious community. The inmates of the factory regularly attended devotional services, and there was always a chaplain at hand. Indeed, every Portuguese, Dutch, and English vessel of large size had its minister on board. The factors were too busy settling their own affairs to think of the conversion of the natives. Not that the question was regarded without some interest and hopefulness by certain pious Christians. One of them, Joseph Salbank, implored the Directors to send preachers and ministers who might "break unto the Factors the blessed manna of the Heavenly

* Ovington's *Voyage to Suratt*, p. 407.

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Gospel." The natives had their own views on the subject. They had already formed a mean estimate of Christianity—which reflects no credit on the religion of the Europeans then in India. It was not uncommon, says Anderson, to hear them at Surat giving utterance to such remarks as: "Christian religion, devil religion; Christian much drunk; Christian much do wrong, much beat, much abuse others." This sentence sums up, though not without exaggeration, the history of Christianity soon after the establishment of the English factory at Surat. Even the little Christianity that was once observed at the factory disappeared, as the factors settled down comfortably in their house, after overcoming most of the difficulties. They thought less of their God, the prayers were practically forgotten, and the devotional services on Sundays gave place to debauchery and profanity.

Almost from the day when the English factory was established at Surat, the Governor and other officers under the Mogul had regarded the *topeewallahs* with peculiar jealousy, and did all they could to make their lives miserable. "The English had some just cause," says Ovington, "of murmuring and complaint, from the treatment they had from the Mogul's officers at Suratt, very different from what they might in reason and equity expect." The *firman* from the Emperor, which enabled the English to establish a house at Surat, had also given them permission of free trade on the payment of 2½ per cent. customs duty on all goods imported and exported. But the English had not been long in Surat when the Governor raised the duty to 4 per cent. Indeed, the amount of duty payable, and the goods on which it had to be paid, were arbitrarily fixed by the Governor. Ovington gives rather an amusing instance of the unfair treatment to which the foreigners were habitually subjected.

"The very plate gold buttons," he says, "which the Chief Factors wore upon their cloaths, were demanded to be paid custom for, as often as they cross'd the river of Suratt. This, to the Purser Marine particularly, was insufferable, whose employment engages him frequently at Sualy to which he must always pass the river; inasmuch as in a short time, the very intrinsick value of his gold buttons would be spent in custom." *

* Ovington's *Voyage to Suratt*, p. 150.

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Wonderful must have been the forbearance of the factors under these trying circumstances. Coming from the land of freedom and justice, and unaccustomed to such servility and injustice, one cannot but admire the equability of temper they showed in those days. They bore all the affronts and insults for the honour of their masters (the Company) and repute of their nation. They knew the weakness of their position, and realised that any serious opposition might endanger the privileges obtained with such difficulty. But even the patience of the factors had a limit. From an entry in the Consultation in Surat dated July 23, 1661, we find the President and Council strongly protesting against "the intolerable injuries sustained by us from time to time from the Governors of this towne." The charges made out by the English against the Mogul's officers may be briefly enumerated as follows:

"(*a*) Did violently assault us in the open street, to the endangering of our lives, without any cause given in our peaceable passage to our garden.

"(*b*) Did forceably halt on shoare the Honble Comp^as^ boats and vessailes, when their occations required them.

"(*c*) Did prohibit the Pr. to pass to the Marine when the Comp^as^ occations especially required his presence there.

"(*d*) Did detayne our horses denying us the use of them.

"(*e*) Did disgracefully and unjustly detaine in Custome Howse severall goods belonging to the Honble Comp^a^ contrary to our articles of Agree^mt^ and equited amongst merchants." *

But Mustapha Khan, the then Governor of Surat, was not satisfied with the detention of horses and goods. He had the audacity to trifle even with the persons of the factors themselves. For we find in the entry under the same date another very serious charge, which is recorded as follows:

"Lastly. On the 17th cur^rt^ did inhumanly, contrary to the law of nations, confine us to our howse, block upp our gates, surrounded our

* Forrest's *Selections*, i. p. 192. The execrable spelling employed in these diaries shows how ill-educated and uncultured were the early founders of the British Empire in India. But, in fairness to them, it must be pointed out that the factors did not profess themselves to be learned either in the literature or law of their realm; they were simple, unsophisticated traders, who excelled in the counting-house, but cut a sorry figure in any other capacity.

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howses with armed men, both day and night, and hath to this day detained 42 persons of us, without any manner of sustenance."

And how did the factors avenge themselves for this inhuman conduct? They bitterly resented these "unsufferable injuries," bore them for the honour of their masters and repute of their nation, and contented themselves by merely sending a copy of these charges to the Moslem Governor. No wonder that the relations between the factors and the Mogul's officers at Surat continued strained. We find this bitter complaint recorded in the diary for 1662:

"It hath been," runs the entry, "ye constant practice of the Governor of this towne to abuse our Nation, whereof wee have been sensible in a higher degree than any of our predecessor. Our last yeares imprisonment and restraynt from food, the attempt of our deathes with many other sordid abuses, cryes vengance on these infidelles. And because our complaynts at home for justice cannot be heard therefore are wee ye scorne of those people, and o^r^ privilledges and honour trampled under by force in ye absence of o^r^ shipping."*

But we have quoted enough to show that the establishment and growth of the English factory at Surat was beset with difficulties which only British pluck and perseverance could have overcome.

Let us now take a rapid glance at some of the diaries kept by the Surat factors and the letters they wrote to their masters at home or to their subordinates at Bombay and elsewhere.† It is not the administrator or the lawyer, the politician or the historian who speaks the loudest from these records of the past. The voice of the trader runs predominant through almost all the diaries and letters. They are full of calculations and computations made with the view of furthering the commercial interests of the Company in the East Indies. We often find the President

* Forrest's *Selections*, i. p. 208.

† The two volumes of Mr. Forrest's invaluable *Selections from the Letters, Despatches, and other State Papers preserved in the Bombay Secretariat* will be our only source of information. The letters date back as far as 1630, but there seems to be a gap of more than thirty years, for immediately after the letter dated November 23, 1630, comes a postscript dated February 4, 1663. The Surat diaries in the first volume cover a period of more than a century (1660–1781), with several intermittent gaps.

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and Council wrangling over the price of camphor or turmeric, shell lack or cinnamon. We have culled the names of the following mercantile commodities mentioned in a single letter:

"Lead, copper, broadcloth, corrall, allum, brimstone, quicksilver, vermelion, elephant's teeth, tynn, anchours, yellow amber, seedlack and sticklack, tincall and coho seed, saltpetre and mirh, chints and quilts, necanees and brawles, alloes sockratina and alloes hepatica or gebelly."

He must be a wonderfully well-informed man of business who can define and identify all these commercial commodities of a bygone age. But there are several matters of great import mixed up with "turmeric and seedlack." The factors were then very hopeful about their connection with Persia, and were also trying to create markets at Mocha, Bussora, and Acheen. In the letter from which the names of the above-mentioned goods have been selected there is reference made to the factories of Agra and Ahmedabad, of Carwarr and Porquatt. The factors also render thanks to their masters at home

"for your spirituall care of our soules in supplying us with a Minister, hee hath now lived some monthes amongst us to our great comfort, his comportment being sober and becoming his function and call to divine and holy orders that wee doe not att all question our future comfort and happiness from his piety and sollid behaviour."*

Then there is reference to "Sevagy," "the grand rebell of Deccan," who was then giving much trouble to the English. In a letter dated 1663 they speak of the devastation of the city of Surat by "Sevagy," whose

"cruelty hath been so great in cutting off hands and heads, that the terrour of his name is become so great to his people, yt even upon every rumour of his coming, the people will bee apt to leave ye towne, if ye King take not care to secure y^{m} with an army."†

* The minister was then paid the small salary of £50 a year and he had to behave himself in order to earn gratuity. For in the account of salary due to the servants of the Company in India we find this remark made against the reverend gentleman: "Gratuity if found deserving."

† Forrest's *Selections*, i. p. 14.

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The Company's account-books at Surat were evidently not kept in a regular and proper manner, for we find John Goodier humbly desiring his masters

"would please to consider his great paines, having laboured more extraordinaryly in the setling and stating ye accot^te^ wch were both erronious and falce, that the confusednesse of them did constraigne him to goe back to Anno 1658," &c.

Master John Goodier thought this too good an opportunity to miss, and persuaded the President and Council to recommend him to a higher salary "for his encouradgment to goe on chearfully and honnestly in your businesse." There is yet another paragraph in this long letter which deserves to be quoted, for it refers to a remarkable Englishman, about whom we shall have to speak more fully hereafter.

"In the next place," they write, "Gerard Aungier is yor humble supplyant that you would please to consider him in his sallery, as his quality doth merritt, and ye place wherin hee officiate as warehousekeeper, that hee may receive the same incouragemt from you as you have thought good to allow others y^t^ have serv'd you in his quality, and hee promised none shall exceed him in duty and ffaythfull service." *

Let it be said to the credit of the Company that not only did they "consider him in his sallery," but soon gave him the highest post in the country, viz., that of the President of the Surat factory and Governor of the town and island of Bombay.

Although the factors were not too particular in the observance of rules and regulations laid down by the Company for the conduct of their affairs, private and public, they did not hesitate to punish those who were either wilfully neglectful of their duties or disobedient to the orders of their superiors. In the diary for 1660 we find the instance of one Matthewe Gray, who was dismissed the Company's service and sent home for disobedience and disrespect. Gray seems to have wilfully absented himself from his post on suspicion that he was about to be sent to Persia, where he did not care to go,

"asserting his own abilityes, to be more and bett^r^ than any in the ffactorye to serve as Secretary here, and for no other reason, he would not goe."

* Forrest's *Selections*, i. p. 28.

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Gray having—so runs the entry—

"ever since behaved himself proudly and scornefully towards us the said Presid[t] and Councell, wee therefore for the reasons afores[d] have discarded him from the place of Secretary, and if he continue refractorye, we shall also the Com[pas] service."*

And as Matthewe Gray continued to be refractory, he was packed off home to repent of his disobedience at leisure. One of the earliest records of a murder and the proceedings consequent thereon is to be found in the diary dated April 19, 1661. This entry is in the form of a protest made by the President and Council of Surat on behalf of the East India Company against the Director and Council of the Dutch East India Company concerning the murder of two Englishmen, Joseph Goodson and John Jones, alleged to have been killed by some Dutchmen somewhere near Surat. It seems that a party of four Englishmen went into a punch-house kept by a Parsee and there assaulted—probably during a drunken brawl—some Dutchmen with sticks, "but the Dutch," runs the entry, "on the contrary opposed them with swordes drawne in soe much that basely, malitiously, cowardly and unworthily they murdered 2 of the aforesaid 4 Englishmen." The English lost no time in seeking redress, but the Hollanders prevaricated and even tried to justify the murders. The former had the depositions of the two Englishmen who escaped unhurt recorded and sent copies thereof to the Dutch. This, however, had no effect on the latter, for by way of reply they put the English certain questions,

"the answeare being accordingly grounded uppon the examinations given in and taken from the prementioned two Englishmen surviving, but nothing of any thinge putt by them as Administr[rs] of Justice, but defendors of the murderers, putting answeare of words into their mouthes by their manner of questioning."

And this is how the President and Council conclude their firm protest:

"Wee conclude this our protest wth ye clearing ourselves of the blood of any Dutchman whatsoever that may happen to be spilt, and

* Forrest's *Selections*, i. p. 185.

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y^t w^t soever dammage or dammages, abuses or affrontes, arise or proceed for and by reason of ye prementioned . . . cause given, wee declare in the presence of God and ye whole world that neither ourselves or any of our nation be guilty thereof, wee having done our dutyes to demand and to give reasons why justice ought to be executed, you the Commandore and Councell being wholy and solely guilty of all the prementioned damadges &c. y^t may happen, and consequently of the persons murdered, breach of correspondence between both nations and ourselves for the reasons rehearsed, clear as wee make no doubt but will appear to all ye world." *

The depositions of the two Englishmen, Robert Hatch and Edmund Greenleafe, must be regarded as highly interesting documents, for they are probably the earliest records of their kind. They are both attested by credible witnesses, the attestation on the deposition of the former running as follows:

"That the afores^d Robert Hatch doth attest the truth of ye afores^d premises and every part thereof, on his corporall oath, is witnessed by us whose names are subscribed,

"Wm. Jesson.
"Roger Middleton.
"Robert Sainthill.
"Fran. Anderson, Secretary

"Swally Marine, 9th Aprill, 1661."

The attestation of Muckadam Moncka Persee, the keeper of the punch-house where the affray took place, has also an interest all its own and is worth quoting in full:

"Into my house at Morah there came in first some Dutchmen, and about one quarter of an houre after, there came in also some English. The English with stickes stroke the Dutch, but the Dutch did not give backe, and after three or foure blowes there lying a sworde on the cotte, whereon the Dutch satt, they drewe them, and killed 2 Englishmen, and then fleed.

"Subscribed,
"Monka.

"That Muckadam Monka doth attest the premises above written, is witnessed by us,

"Droldas.
"Cullian.
"Naunboy.
"Jemposiex."

Forrest's *Selections*, i. p. 189.

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It may be noticed that whereas the depositions of the two Englishmen were attested by four *European* witnesses, that of the Parsee was attested by four *native* witnesses. The Parsee's deposition was naturally relied upon by the Dutch, particularly as he said that "the Dutch did not give backe." The English equally naturally refused to believe Muckadam Monka, and even accused the Dutch of "willyfying our nation in preferring the word of a Persee and heathen before that of two Christians."

It is interesting to observe that the factors at Surat all lived and messed together in one house; in fact, they were like members of one family. But, as it sometimes happens in the best regulated families, there were quarrels and dissensions amongst them. We find that in 1661 Henry Gary, the Chief in Acheen (who subsequently became the Deputy Governor of Bombay), was charged with certain offences by John Widdrington, Benjamin Clopton, and John Atkins, which appeared to the President and Council so criminal that they called upon Gary to vindicate himself. As his written statement was not found fully satisfactory

"wee summon'd his appearance before us, and examined him on each Article of his said charge, who gave us ample and satisfactory replyes, making his innocency appear the more plaine unto us by severall bookes of accompts, attestations and other papers wch he brought from Acheen."

The President did not drop the matter at this stage. Actuated by a sense of the wrong done to his innocent colleague, he called upon the accusers to bring further proofs of their charge,

"for it cannot enter into us that their malice or impudence should swell to the accumulating so many aspersions, even to the ruine of a person of his quality; we doe therefore leave the conclusion of this business untill their arrivall, in the meane tyme appointing Mr. Gary to the management of the Hon'ble Comp^{es} affaires in degree to his quality." *

John Widdrington and his companions evidently found themselves in a fix, for they did not bring forward further proofs,

* Forrest's *Selections*, i. p. 198.

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though more than once summoned, and we find the following entry made in the diary for May 20, 1662:

"Wee see no reason Mr. Garyes innocense appearing by his vindication (and much more by their refusall to come hither) why hee should longer lie under a suspition, but rather be preferred according to his abilityes, wch at this meeting we have regard unto by conferring on him the place and dignity of one of the Councell of India," &c.*

It is due to the President and Council of the Surat factory to add that in dealing with this delicate matter they did justice to the innocent factor with an impartiality which would not have been excelled even in these days, though one would have liked to know if the accusers were made to atone for the malice and impudence they showed in "accumulating so many aspersions."

Many of the early diaries contain instructions embodied in the commissions which the President and Council gave to commanders of vessels leaving Swally Hole for another port. "Wee having had experience of your abilitye," runs an entry, "do now appoint and confirme you Master of the Swally Pinnace," &c. The instructions were explicit and were rigidly enforced. They always seem to anticipate the death of the commander, for "in case of mortalitye, which God forbid, wee enorder Mr. —— to succeed in command, and that ye shippes Company give observance accordingly, which with wishes for a speedy and safe voyadge periods our desires at this tyme." The President and Council would not tolerate any deviation from the rules laid down for the captains in charge of the Company's ships. One of them seems to have been remiss in his duties, and this is how Matthew Andrewes and John Lambton took notice of his remissness:

"The slighting and dispising of the P^rs^. orders, and abuse in dishonouring a person of his quality, in wearing his fflag in disrespect to the Company, when they have two shippes of their owne in the road, refusing to strike it although so commaunded by the President, and when the P^r^. was on board the Comp^as^ shipp his not lowering his fflag, nor saluting him with a gunn, and putting out a piece of a torne ancient, are things not unregarded even by the natives here, and very much conducing to the disrepute of the Company, whom hee represents."†

* Forrest's *Selections*, i. p. 201. † *Ibid.*

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In those days, and for a considerable time after, the factors were obliged to do most of their business through native brokers. They were generally Hindus, though Parsees seem to have been sometimes employed. These served their masters well—but often served their own interests better. Taking advantage of the factors' ignorance of native languages and of their want of experience in Indian trade, the brokers did not hesitate to swindle the English. They also used to set the factors and the Mogul's officers by the ear by representing the same matter to them in different lights. The English were conscious of their helplessness, and resigned themselves to the vagaries and bad faith of their brokers. But sometimes the worm turned. For instance, in the diary for 1661, we find the President and Council referring to the villainies of Tockersee, which were so reprehensible "y^t^ long since wee tourned him out of the Hon'ble Comp^as^ Employ^mt^ and then sent for him to repaire hether y^t^ hee might have justice done him, as on ye side also of the Hon'ble Company." But Master Tockersee did not show his face again—and very wisely too. In his place another broker was sent for, named Suntockee Vetcher, "having had experience of his abilityes, both here and there also, as good security for his truth, therefore shall recommend him unto you for his encouragement." *

* In a volume recently published by the Hakluyt Society there is, among other manuscript documents, a letter written by a factor named Master, from which it appears that in 1663 one Bhimji Parakh was the Company's broker at Surat, who had a brother named Cullian Parakh. Both these Banias were exceedingly shrewd and subtle, particularly Cullian Parakh, and the following story is related by Master of his outwitting the lawyers on one occasion. We reproduce the story as given in the *Bombay Gazette* for August 4, 1906: "There was, about the year 1663, as I remember, a commission sent out of the Court of Chancery for examination of witnesses in India upon a suit of law between Sir George Oxenden and others, wherein some of the Banians could give good evidence, wherefore, when the Commission came to be exercised, the Banians were produced to give in their evidence, and thereupon the parties whom their evidence would have prejudiced put cross-interrogatories to them to invalid their evidence according to the laws in England, little thinking the Banians were so little confined in their opinions as they are, for they asked them whether they believed in God and His Son Jesus Christ, and whether they believed the Holy Gospel of our Saviour Jesus Christ to be true, to all which they presently answered they did believe, and said there was no difference between the English religion and theirs, only the English killed cows and ate flesh, which they did not do. They were also asked whether they would swear, according

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The factors were, however, kind masters, and did not neglect their native servants in times of trouble. This is abundantly made clear by a sympathetic entry in the diary dated August 6, 1662:

"At the humble request of poore Tulsidas, a ffaithful and industrious servant of the Hon'ble Companyes, the President conveened his Councell, presented them with his (indeed) deplorable condition. That having lived many years in great repute, abounding wth riches, much respected for his ffaithful dealing, hee is reduced now (by reason of the great debts oweing unto him by some of our Nation) to so great povertie, his condition so meane, y^{t} the small proffit hee reaped by his employm^{t} in the Hon'ble Companyes service (wch is his whole dependance) is not sufficient for the subsistance of his ffamily. Wee being verry sensible of the truth hereof, called to memory y^{t} many years since, when he was in a flourishing condicion, he had an annuity of 500 Mamodoes * allowed him by the Company, wch we doe now againe revive, not doubting our Masters approbation thereof, since 'tis great charity, and no less then his contynnuall attendance on the Companyes affaires merritts." †

It has been observed above, on the authority of Kaye and other writers, that the administration of civil affairs was entirely in the hands of the President, though he was assisted by his Council. Perhaps the most difficult question which the President was then called upon to decide was as regards the administration of the estate of a deceased person, as is evident from a letter written by the President to the Company at home, dated April 4, 1664. About this time Mr. John Lambton (who was apparently Second in Council at the time) seems to have passed away, leaving some property behind him. As soon as the President (Sir George Oxenden) was made aware of this sad

to their custom, by laying their hands on a cow or a calf's head, that they did believe in God and Jesus Christ and His Gospel and so all the articles of the Apostles' Creed, to which they said they would do; for they said their religion taught them that Jesus Christ was the Son of God and they believed the English religion to be true. This, Sir, I say passed here [at Surat] in the year 1663, the Banians being very eminent and intelligent persons, by name Bimgee Parrack, the Honourable Company's Broker, and his brother, Cullian Parrack."

* "Mamoodoes," says Fryer, "are current only in Surat and parts adjacent; they are worth somewhat less than an English shilling, but are so accounted in the Company's books; and among merchants in the country, 2½ mamoodoes is reckoned a rupee."—Fryer's *East Indies and Persia*, p. 205.

† Forrest's *Selections*, i. p. 204.

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event, he summoned the two brothers of the deceased, and in their presence locked and sealed up the doors of his chamber. They were then called upon to make good their claims to the property, which, having been carefully scrutinised, were duly admitted. The President took all possible care to administer the property of the deceased John Lambton with strict impartiality, but, notwithstanding this, some unworthy person misrepresented the facts at home and cast various aspersions on his integrity. The mother of the deceased, Lady Lambton, thereupon petitioned the King, at whose direction the Company called upon the President for an explanation. Hence the letter referred to above. Sir George Oxenden fully justified his conduct and made a defence which would have done credit to an able lawyer. He repudiated the charges brought by Lady Lambton, at the instigation of a mischiefmaker, and added that in order to see fair dealing on all sides,

"there hath been appointed Mr. Gerald Aungier and Mr. Charles Smeaton for the perfecting the accot which were indeed in peece meales, and broken loose papers, hard to be understood, and that your Presidt (as the Lady pretends) hath not medled with them, or the estate of her sonne John," &c.*

This letter shows how easy it was to throw dust in the eyes of the authorities at home and to bring discredit on persons whose integrity was above suspicion.

Long as is the list of Presidents of the Surat factory, beginning with Kerridge in 1612 and ending in 1686, when the seat of government was removed from Surat to Bombay, it can hardly be said to be one deserving of permanent record. As Anderson observes, there is little to admire in the pioneers of the British Empire in the East; indeed, some of them were "amongst the meanest of mankind." And yet there were some among them who may be ranked with the noblest. There were even then men who knew the right and did it, "men who kept alive the spirit of just acts, the spirit of forbearance and toleration, and above all the spirit of liberty and freedom inherited from their ancestors." They were true to their mission, the mission of trade, but they were also true to the

* Forrest's *Selections*, i. p. 40.

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mission of justice, liberty and forbearance—a mission which has enabled England to assert her powerful influence in every part of the world. The voice of the trader was the loudest, but it did not hush the voice of the just administrator or the wise ruler. In warehouses of turmeric and seedlack there were stored also the fruits of wisdom and uprightness. There were some men even then who held the scales of justice as evenly and efficiently as the scales in which they weighed out pepper and spices. We shall pick out only two such men, Sir George Oxenden and Gerald Aungier. It may be asked why only these two Presidents of the Surat factory are assigned a place in this account and what part they played in the development of early judicial institutions in the Western Presidency. In the first place, as has been observed, a President in those days was much more than even the Governor of Bombay at the present day. He was Judge, Commander-in-Chief, and several other functionaries by virtue of his office. As Judge, he administered civil justice absolutely, and in criminal matters he had important powers vested in him. As Mill says, the powers exercised by the President included those which authorised him to seize his countrymen, even those who were not in the service of the Company, to keep them in confinement and send them to England, "an extent of authority which amounted to confiscation of goods, to imprisonment, and what to a European constitution is the natural effect of any long confinement under an Indian climate—actual death."* Besides these general reasons, there are others which more particularly claim a little space here for the record of the lives and careers of these men. For from Oxenden and Aungier may be said to have flowed the fountain of justice in Bombay, which has to-day grown into a mighty river. They, and more particularly Aungier, helped to build up the first Courts of Judicature in this city, at which the "customers" presided and administered justice to its ten thousand inhabitants. They may therefore justly claim to be the pioneers of judicial administration in Bombay, and, as such, deserve from us more than a passing notice. In this chapter we shall confine ourselves to a brief sketch of Sir George Oxenden's career, as Gerald Aungier, though without a title, deserves a chapter all to himself.

* Mill's *History of India*, iii. p. 13.

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George Oxenden, third son of Sir James Oxenden, of Dene, was born in 1620, in Kent. Of his early years very little is known, except that he seems to have spent his youth in India and the greater part of it at Surat. He must have come out as a servant of the East India Company at an early age, and, like other factors, must have gone through the period of apprenticeship as usual, attaining the highest post step by step. It was as late as 1662 that Oxenden was appointed Chief of the Surat factory, a post he held with great ability till the end. A man of considerable ability and high character, he seems to have conducted the affairs of the Company to the entire satisfaction of his masters. But Oxenden's path in India was not strewn with roses. He did not pass his days in luxury and ease. Those were trying times indeed, when the Chief of the factory had to contend against almost insuperable difficulties. He had to nurse the whims of an arbitrary Mogul Governor, and try to make peace with the Portuguese on the one hand and the Dutch on the other. Then there were his own countrymen, unprincipled and unruly many of them, who were a constant source of anxiety. Add to this the depredations of that "grand rebell of the Dekkan, Sevagy," and we can have some idea of the troubles which beset Oxenden. Born of a fighting family, one of his ancestors having held high command at the battle of Poictiers in 1356, Oxenden probably welcomed the advent at Surat of Sivaji, for whom he proved more than a match. In the long letter the President and Council wrote to the Company on January 28, 1663,* there are several interesting passages describing the terror struck in the hearts of the Mogul's officers by this intrepid Mahratta warrior. The Governor of Surat and his underlings delighted in harassing the English because the latter refrained from taking up arms against them. But no sooner did Sivaji make his appearance at Surat than these Moslem heroes took to their heels. "This suddaine surprise," wrote Oxenden, "strucke such a terrour into all, both men, women and children, that this Governor and ye rest of the King's Ministers and eminent merchants betook themselves to ye Castle." The brave factors at Surat behaved themselves very differently. Men and ships were at once gathered together,

* Forrest's *Selections*, i. p. 14.

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"and having drawne y^m out in ranke and file with drum and trumpett, yor Presid^t in the head marcht through ye body of ye towne to ye Greene before ye Castle, where ye Governour was ready to pop in upon the first notice of their approach." Sivaji at first pretended to seek the friendship of the English, but the astute President was quick enough to see through his object. Oxenden openly avowed him "a rebelle and a thiefe," and challenged him to fight. Enraged at this, Sivaji did all in his power to ruin the city of Surat, burnt many of the houses, and but for the gallant defence of Oxenden and his crew, would have razed the town to the ground. He even caught hold of one Anthony Smith, an Englishman, whom he imprisoned and would not release without a substantial ransom. Poor Smith nearly lost his head, for, if the ransom was not forthcoming, Sivaji used to demand the hand or the head, according to the quality of his victim. He seems to have sent an ultimatum to Oxenden that if he did not surrender he would raze the factory to the ground and spare not a soul. The President's reply was worthy of a true warrior and loyal servant of the Company. "We replyed," he wrote to his masters, "wee were here on purpose to maintaine your house to ye death of ye last man, and therefore not to delay his coming upon us." But Sivaji did delay his coming upon the English, and dared not measure arms with them. The Mogul Governor of Surat was so well pleased with the assistance rendered by Oxenden that he insisted upon presenting him with a vest and a horse, and would have girt a sword about him. Oxenden's reply is again characteristic of the man. "But yor Presid^t told him," runs the letter, "these were things becoming a souldier, but wee were merchants, and expected favour from ye King in our trade." Not that he was not a soldier. He came of a fighting stock, and could fight as well as any man in the Surat factory. But even in the hour of his victory he forgot self and thought only of his mission. The Great Mogul was so favourably impressed with the bravery of the English and the leadership of their Chief that, besides offering Oxenden a *serpaw* (a robe of honour from head to foot), he gave them certain concessions, one of which was that the whole customs of the merchants were to be remitted for one entire year. While informing his masters of the abatement of customs to 2½ per cent., Oxenden significantly added, "And this when

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by our endeavours wee shall effect, wee shall hope for a suitable reward from you our masters, whilst the thing it selfe shall remaine as a lasting memoriall of our active willingnesse to promote your interest." The grateful masters, says Fryer,* in token of the high sense they had of his valour, presented him with a gold medal, with the device *Non minor est virtus quam quærere parta tueri.*

The early factors at Surat were God-fearing men, men who had the name of God on their lips before undertaking any serious task and strove to conform themselves to the Ten Commandments. But no factor feared God more than Oxenden. He seems to have been a deeply religious man, and ever since he was placed in command at Surat it was his aim to infuse the spirit of his Master into all he came in contact with. Almost his first concern after becoming the Chief of Surat was to set apart a place of worship and adorn it decently, with a library containing several volumes of the Holy Bible in different languages. He wrote to his masters at home

"to send us out a large table in a frame, gilded and handsomely adorned with Moses and Aaron, holding the two tables containing the ten Commandments, the Lord's Prayer and the Creed, written in letters of gould, and in ye midst at ye topp in triangles, Gods name writt in as many of these easterne Languages as Arabic, Persian, &c., as can be procured." †

Oxenden may be said to be one of the founders of the Bombay Cathedral. At any rate, the outline upon which the structure was raised was the design of this remarkable man. "This was the man," enthusiastically observes James Douglas, who knew Bombay as no other man of his time, or perhaps of any time, did—

"whose wisdom and prescience grasped the religious requirements of the future of his Church in Bombay; for it may be said with truth that the conception of the seventeenth century does no disgrace whatever to the architectural ideas or exigencies of the nineteenth." ‡

* *East Indies and Persia*, p. 87.
† Forrest's *Selections*, i. p. 31.
‡ *Bombay and Western India*, by James Douglas, ii. p. 243.

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Unfortunately, Oxenden did not live to see the completion of the edifice, which was raised by subscriptions chiefly with the help of the Rev. Mr. Cobbe, the Chaplain, Aislabie (Governor, 1708–1715) and Boone (Governor, 1716–1720). The Cathedral would have remained only on paper after the death of Oxenden but for the active support of these men. For "when Sir George died," writes Hamilton, "Piety grew sick, and the building of Churches was grown unfashionable." * But the spirit of George Oxenden still hovered over the site where the Cathedral was finally erected.†

The presidentship of Oxenden was signalised by an event which must be recorded as the most important in the early history of Bombay. Indeed, Bombay may be said to have come into existence, at least as a possession of the English Crown, with the occurrence of that event. This was the marriage of the Infanta of Portugal with Charles II. in 1661, the dowry she brought to her sovereign lord including the port and island of Bombay. Oxenden was not then the Chief of the Surat factory; he was probably in England at the time, for we find that he was knighted at Whitehall on November 24, 1661.‡ We shall deal with the acquisition of Bombay as a possession of the Crown and the events immediately following it in some detail in the next chapter. It may only be noted here that with its acquisition the position of the Company became rather peculiar. For although Bombay lay within the Company's territories, they had no jurisdiction over it. But the Court of Directors in March, 1661, resolved to restore their trade in the East Indies, and desired to make the acquisition of Bombay by the Crown serve their own interests. Accordingly, they appointed, on March 19, 1662,§ Sir George Oxenden to the post

* Hamilton's *A New Account of the East Indies*, i. p. 187.

† Speaking of this Cathedral Mr. Edwardes writes: "The oldest relic of the early British period, yet in existence, is the ruined Court House; next in point of age, if we exclude the remains of the fortifications, is the Cathedral. They seem to us to symbolise the two strongest bulwarks of our dominion in India—justice for all men, and the clemency that cometh of true Christianity." —*Rise of Bombay*, p. 139.

‡ *Dictionary of National Biography*, xliii. p. 9.

§ Douglas says Oxenden was appointed Chief of the Surat factory on September 18, 1662. This date probably refers to his actually taking over the reins of government at Surat, the difference of six months being accounted for by the time occupied by the voyage in those days.

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of President and Chief Director of all their affairs "at Surat, and all other their factories in the north parts of India, from Zeilon to the Red Sea." * On his arrival in India, Oxenden found the position of the Company very critical. Its trade was confined to the presidencies of Surat and Fort St. George and to the factory at Bantam. France and Holland conspired to arrest the growth of the Company's trade, in which conspiracy even the Mogul's officers seem to have joined. The affairs in the island of Bombay were also in a very unsettled state. Oxenden held out for some years against heavy odds. At last the Crown was obliged to cede Bombay to the Company in March, 1667, and the latter commissioned Oxenden to take possession of the island of Bombay. In August following the Court of Directors appointed him Governor and Commander-in-Chief of Bombay, with power to nominate a Deputy-Governor to reside on the island, the latter being placed under the control of the President and Council at Surat. Speaking of Bombay at this period, Ovington says:

"In this one of the Company's Factors always resides, who is appointed Governour to inspect and manage the affairs of the Island; and who is vested with an authority in Civil as well as Military matters, to see that the several Companies of soldiers which are here, as well as Factors and Merchants, attend their various stations, and their respective charge." †

On September 21, 1667, the island was formally made over to the new Governor, in which year also Oxenden, who was then a knight, was created a baronet, probably in token of the distinction he had received as the first Governor of Bombay. But though the first Governor under the Company's rule, he does not seem to have resided for any length of time in Bombay. Probably he preferred to stay at Surat, where he had passed the best part of his life, and which was then the premier presidency in India. Hamilton says the President was obliged to stay at the Surat factory, to which, in 1657, all the other presidencies and factories in the East Indies were made subordinate. On the receipt of the Royal Charter transferring Bombay to the

* *Dictionary of National Biography*, xliii. p. 10.

† Ovington's *Voyage to Suratt*, p. 147.

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East India Company, Oxenden felt the great delicacy and difficulty of his task. The Crown had already appointed a Governor in Bombay to look after its affairs, and Oxenden feared lest these royal officers might not be disposed to acknowledge the authority of a few mercantile agents to receive the transfer of the island on behalf of the Company. He sent Messrs. Goodyer, Master and Cotes to settle all affairs peaceably, which they did in September, 1668. Next year the President himself visited the island, and appointed five commissioners to manage its affairs. It was during this historic visit, all too brief, that Oxenden had certain rules published in Bombay for a more efficient management of its affairs, and framed a set of regulations arranging and completing codes for the civil and military administration of the island. Beyond the fact of their publication, nothing is known about either their contents or nature. But it does not seem improbable that they included the establishment of a judicial tribunal, called for by the advent of the English and the influx of the natives from the neighbourhood. Even at this early stage in the history of Bombay we read of many and bitter disputes regarding the possession of land, the greater part of which was vested in the Portuguese settlers. The subject of the claims of the Portuguese inhabitants to lands was discussed by the Commissioners, and in order to facilitate the discussion the services of one Ramsimar (Ramchandra Shenvi), a Portuguese scrivan, "so necessary for his knowledge of all the affairs of the island by his so-long residence here," were engaged, and another Portuguese resident, Simao Serrao, "well read in the civil and imperial laws," also helped the English in discovering their just rights and privileges.

Oxenden died at Surat on July 14, 1669, soon after his return from Bombay, when he was not quite fifty. An early chronicle thus sums up the life and life-work of this remarkable Englishman:

"A man whose probity and talents had enabled the Presidency (of Surat) to preserve the Company's rights and commerce, and who, to the esteem of their servants, united the respect of the Dutch and French, as well as of the native government and merchants of Surat."

Had he been spared a few years longer, he would have

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left Bombay more settled and prosperous. As it was, anarchy set in soon after he passed away. But his mantle fell on no unworthy shoulders. Gerald Aungier filled the vacant *masnad*, both at Surat and in Bombay, and it may be truly said that there are few pages in the history of Bombay which contain a finer record than those which speak of Aungier and his work. Two monuments, one in England, the other in India, are still extant, preserving the memory of George Oxenden. There is a portrait at Broome's Park, Kent, the seat of the Oxendens from the seventeenth century, representing our hero in a long flowing white wig and a blue coat with the Company's brass buttons, and a bâton in his hand, with an Indian scene in the background. The monument in India is more enduring and stately. His grateful masters would not let him lie under a simple, unadorned tomb. Speaking of some of the magnificent tombs of the European settlers at Surat, Ovington says: "The two most celebrated Fabricks among the English, set off with stately Towers and Minorets, are that which was erected for Sir John [George?] Oxonton, and the other for the renowned and Honourable President Aungers [Aungier]." * On this mausoleum may still be noticed the following inscription:

"Insulæ Bombayensis Gubernator,
Vir
Sanguinis splendore, rerum usu,
Fortitudine, prudentiâ, probitate,
Pereminentissimus." †

Let us conclude this brief sketch of our first Governor by one more quotation.

* Ovington adds: "The two most noted among the Dutch is one, a noble pile raised over the body of the Dutch Commissary, who died about three years ago; and another less stately, but more famed; built by the order of a jovial Dutch Commander, with three large Punch-Bowls upon the top of it, for the entertainment and mirth of his surviving friends, who remember him there sometimes so much, that they quite forget themselves."—*Voyage to Suratt*, p. 405. A sad commentary on the social habits of the day.

† We have quoted this inscription from Douglas's book. It is only a part of the inscription; the inscription on Oxenden's tomb is much longer. The original is still easily decipherable.

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"Patriarchal, simply as the first of the Company's race of Governors," quaintly observes a writer in the *Monthly Miscellany*, "is that Sir George Oxenden, whose virtues known and felt during his lifetime, and mausoleum at Surat—the scene of his demise—still celebrates by force of the sculptor's chisel independent of the style of the historian." (*Sic.*) *

We have tarried long at Surat: we must now turn our attention to the town and island of Bombay. Its acquisition by the Crown did not immediately threaten the pre-eminence of the Surat factory, but its cession to the Company must have given rise to suspicion and jealousy in that quarter. So long as Bombay remained inconsiderable, so long was Surat supremely content to be reckoned the premier city in India; but it could not boast that title very long. Aungier spoke of Bombay as "a city which by God's assistance is intended to be built," and Child prophesied its bright future. Surat soon realised that the authority it had so long exercised was dwindling. The factors, however, remained faithful to the old haunts as long as they could. Ten years after the acquisition of Bombay, the President and Council, in reply to advice from home that they should not think of leaving Surat, but continue to be on a fair understanding with the Mogul Governor, wrote: "We declare unto you that we are farr from having any thoughts of leaving Surat, that we judge it your interest to continue as firme a settlement and large a trade as ever, notwithstanding your Island Bombay." At the same time they added that "our eyes and thoughts are as sincerely fixed on the raise of your Island Bombay as becomes us." And those eyes and thoughts were so intently fixed "on the raise of your Island Bombay" that Surat was soon obliged to accept a subordinate position. Its fate was sealed in 1687, when Bombay was made the seat of Government and the President and Council settled down on the island, which was then raised to the high-sounding but little-meaning dignity of a Regency. The effect of this transfer on the administration of justice, such as it was at the time, is thus noticed by Fryer:

"What irregularities are committed against only the Presidency or Company, in case of non-submission, the persons offending are to be

* This passage does not read correctly, but we have quoted it as we found it.

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sent home, and dismissed their employments for refractoriness; but if an higher court lay hold of them in case of murder or any capital crime, then they are to be sent to Bombaim, there to have a legal trial according to the laws of England, as the President is created the Governor of His Majesty's Island." *

But though the importance of Surat as a presidency decreased, it long retained its supremacy as a factory. Indeed, its commercial prosperity seems to have increased by leaps and bounds. Even as late as 1771, when Forbes visited the place, he found it a most thriving city. For he declared that the riches and splendour of Surat reminded him of the description of Tyre by the Prophets.

"The bazaars were filled," he wrote, "with costly merchandise and with picturesque and interesting groups of natives on elephants, camels, horses and mules from all parts of the globe in their respective costume: Turks, Persians and Armenians on Arabian chargers, European ladies in splendid carriages, Asiatic females in hackeries drawn by oxen, crowded the streets."

But only a brief decade after we have a picture set before our eyes, which is painted in sombre colours, with a dismal background. Almost the next sentence reads thus:

"Neither Hindoo nor Mahomedan pageantry now enlivened the public streets, and the war which had so long raged in Europe and India, affected the Asiatic commerce in general, but was most sensibly felt at Surat. Her dockyards, storehouses, and bazaars indicated little of that life and spirit formerly likened to the glowing picture of ancient Tyre; all was now comparatively silent and forsaken."

And from that time forward the city of Surat became more and more forsaken and forlorn. Soon after, a terrific storm visited the place, practically desolating it. "The scenes of distress that are around us," wrote the then President of Surat to the Government of Bombay, "call for every aid of pity and commiseration." But Surat was doomed, and almost every year there was marked deterioration. Only one point remains to be noticed. We have already seen that a dual Government existed at Surat after the establishment of the English factory. Such a system had obvious inconveniences. Though the

* *East Indies and Persia*, p. 87.

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English grew to be more or less supreme, they could not interfere to a sufficient extent in the details of administration as long as the whims of an Oriental Nawab had to be studied. An opportunity presented itself in 1799 to abolish this impossible system. In that year the reigning Nawab died, and the English were compelled to interfere in the appointment of a successor in order to put an end to the exactions, oppressions, and corrupt administration of the Nawab's Durbar.* On May 13, 1800, a treaty was concluded with the new Nawab, by which

"the management and collection of the revenues of the city of Surat and of the territories, places and other dependencies thereof, the administration of civil and criminal justice, and generally the entire government of the said city and its dependencies, shall be vested for ever wholly and exclusively in the Hon'ble English Company."

It was further announced by a Proclamation that

"the motives and object of the British Government in taking on themselves the full and entire government of Surat have been and are to procure thereby a just, wise, and efficient administration for the security of the lives and properties and the promotion of the happiness of all its inhabitants, of which with God's blessing the good effects may soon be rendered manifest." †

Under this treaty the Chiefship and Council of Surat were abolished and a Lieutenant-Governor of the Castle was appointed. Its administration was entrusted to a Judge, who was also Magistrate, and a Collector of Revenue and a Collector of Customs. Three years later the title of Lieutenant-Governor was changed into "Agent of Government at Surat." Although the treaty of 1800 marks an important epoch in the history of Surat, it does not restore it to its former glory. Its only effect was to free it from the vagaries of an irresponsible rule. From being the premier presidency in India, lording it even over Bombay, Surat has to-day become a mere district of the Bombay Presidency. Both Nature and man seem to have dealt with it unkindly—Nature even more unkindly than man.

* Forrest's *Selections*, i. p. xxxiv. † *Ibid.* i. p. 448.

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CHAPTER III

THE ACQUISITION OF BOMBAY AND ITS CESSION TO THE COMPANY

THE Treaty of Marriage between Charles II. and the Infanta of Portugal is dated June 23, 1661, and was ratified a couple of months after. It consists of twenty articles, besides the secret article about which much unnecessary fuss has been made. By this article the King of Great Britain bound himself to exert all his power to establish a solid and lasting peace between the Most Serene King of Portugal and the States-General of the United Netherlands; whilst in the event of a rupture England guaranteed the defence and protection of the Portuguese possessions in the East Indies against the Dutch. Douglas regrets that "such a disgraceful document should smudge one page of the History of England." "Both lawgiver and historian unite in common," he adds, "to treat it as a dead-letter and consign it to oblivion." Whether the secret article deserves such summary condemnation or not, is no concern of ours. Suffice it to note that it soon gave rise to mutual animosity and discord, as did some of the other articles of the Marriage Treaty. The article which is of the greatest importance and interest to us is the eleventh, and will bear quotation in full:

"That for the better improvement of the English interest and commerce in the East Indies, and that the King of Great Britain may be better enabled to aid, assist, defend and protect the subjects of the King of Portugal in those parts from the power and invasion of the States of the United Provinces, the King of Portugal with the assent and advice of his Council gives, transfers, and by these presents grants and confirms unto the King of Great Britain, his heirs and successors for ever, the Port and

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Island of Bombay in the East Indies with all the rights, profits, territories and appurtenances whatsoever thereunto belonging, and together with all income and revenue, as also the direct and absolute Dominion and Sovereignty of the said Port and Island of Bombay and premises, with all their royalties, freely, fully, entirely and absolutely. He also covenants and grants that quiet and peaceable possession of the same shall, with all convenient speed, be freely and effectually given and delivered to the King of Great Britain (or to the persons whom the said King of Great Britain shall depute for this purpose) for his own use. In pursuance of their cession the inhabitants of the said island (as subjects of the King of Great Britain, and under his Commands, Crown, Jurisdiction and Government) shall remain therein and enjoy the free exercise of the Roman Catholic religion in the same manner as they now do: This must be understood as it is now declared once for all that the same regulation respecting it shall be observed for the exercise and preservation of the Roman Catholic religion in the City of Tangier, and in all other places which by the King of Portugal shall be granted and delivered to the King of Great Britain in the same manner as were covenanted and stipulated in the delivery of Dunkirk to the English gentlemen. And when the King of Great Britain shall send his fleet to take possession of the port and island of Bombay, the English shall carry instructions to treat the subjects of the King of Portugal in the East Indies in the most friendly manner, and to help, assist, and protect them in their trade and navigation there."

The first point worth noticing in this place, which suggested itself to Sir Alexander Anstruther, the Recorder of Bombay in 1814, in *Doe d'Antonia de Silveira* v. *A. P. Texeiria*,* and which was afterwards elaborated by Sir Michael Westropp in the monumental judgment already referred to, is the silence the eleventh article observes regarding the laws of the Portuguese in Bombay. This important point has already been touched upon elsewhere, but it will bear a little amplification here. The dowry which Catherine of Braganza brought to King Charles II. included not only the port and island of Bombay, but also the city and castle of Tangier. The same provisions governed the transfer of these two places, with one very significant exception. After providing for the free exercise of the Roman Catholic religion in Tangier, the third article recited that "they (the inhabitants of the City and Fort of Tangier) shall be ruled and governed by the same laws and customs as have hitherto been used and approved in the aforesaid town and castle." Now the Portuguese inhabitants of Bombay were also governed by certain

* 2, Morley's *Digest*, p. 247.

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laws and customs peculiar to them. But a similar provision was not made in the eleventh article. Why this distinction? Sir Michael Westropp points out that only two months and twenty days had elapsed between the granting of the Charter of 1661 to the East India Company and the signing of this treaty which made Bombay a possession of the Crown. As already noticed, the Charter of 1661 empowered the Company to establish courts of justice in India, and enacted that the laws of England should prevail in all the factories and settlements subordinate to it.

"It is not too much to suppose," adds the learned Chief Justice, "that the advisers of King Charles II. thought that it would be too glaring an inconsistency that the laws of England should prevail in the factories and settlements of the Company in India, and that the Portuguese, or some other laws not English, should prevail in the territory of the Crown in the same country."

Considering that several eminent men, who were famous both as lawyers and statesmen, had entered into the treaty on behalf of Charles II., it is not to be wondered at that such an inconsistency was avoided.*

Although the provisions of the eleventh article seem to be specific enough, it is highly improbable that even these eminent men fully understood their true import. They certainly could not have known where and what Bombay was. It is not a little amusing to notice that Lord Clarendon, one of the signatories to the treaty, wrote of the "Island of Bombay with the towns and castles therein which are within a very little distance from Brazil"! My Lord Clarendon may have been learned in the law and clever in the art of legislation, but his knowledge of geography left something to be desired. And as regards the "towns and castles therein," they were the creations of his lordship's too fertile imagination. It was perhaps a mercy that Charles II. did not send him out to take possession of Bombay on his behalf, for the disillusionment would have been startling. Even in the body of the treaty the same lack of

* A somewhat striking parallel is afforded by the cession of Malacca early in the nineteenth century. An established system of Dutch-Malay law existed there, but it is held to have been supplanted by English law as prevailing in the Straits Settlements previously acquired.

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accurate knowledge, combined with looseness of expression, is exhibited. For the eleventh article gives and transfers to the King of Great Britain "all rights, profits, territories and appurtenances whatsoever thereunto belonging." These high-sounding words must have provoked laughter in those who knew the Bombay of the period. The greater part of the island was, more or less, submerged in the ocean, and the little soil that remained above water was mostly barren and was not considered worth cultivating. Bombay had not then attained the distinction even of a caçâbe or chief station. Mahim was a more important town, and even the Manor of Mazagaon was more valuable. A Portuguese chronicler gives the following meagre description of Bombay as it then was:

"Bombay Castle consists of a bastion, nothing more than a platform, the fortified place being four-sided, about ten walking paces from each side. The village of Bombay is a small thing; has eleven Portuguese families and with the blacks make up a force of seventy mosquiteers."

So miserable were the resources of the place that it was with considerable difficulty that an annual revenue of £2,800 was raised some years after, and as late as 1728 the whole of Malabar Hill was let on lease at the magnificent annual rental of Rs.130! Those who complain of the exorbitant rents on Malabar Hill to-day may well look green with envy. If England gained anything by this bargain, it was the splendid harbour of Bombay. But what was the harbour to the English without the island? They had to take both, or neither.

In order to gain possession of the port and island of Bombay with the "territories and appurtenances" belonging thereunto, Charles II. despatched, in March, 1662, a fleet of five men-of-war, under the command of the Earl of Marlborough. There were on board five hundred troops commanded by Sir Abraham Shipman, who was appointed General on shore. Antonio de Mello de Castro, Viceroy of the King of Portugal, accompanied the fleet, and was commissioned to deliver over to the English the peaceful possession of the island. The King's fleet arrived at Bombay on September 18, 1662, and the Earl of Marlborough demanded, in the King's name, the cession not only of the port

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and island of Bombay, but also of its dependencies, conformably to the provisions agreed upon. Ever since the date of the Treaty, the Portuguese were trying to find out means to thwart the English in their legitimate object. They had the prescience to see that the loss of Bombay would deprive them of no small amount of prestige and profit. For in spite of "the inconsiderableness of the place Bombaim," they found it well suited to their requirements and an easy prey to their proselytising zeal. They were anxious not so much for the trade of the place as for the safety of their converts. In a letter written by the Portuguese Viceroy, who had accompanied the King's fleet, to his royal master, the fear that they might be forced to renounce the Roman Catholic religion was set forth as a reason for not giving up Bombay to the English.

"I see in the Island of Bombay," he wrote, "so many Christian souls which some day will be forced to change their religion by the English. How will they allow the Catholics to reside in their territories when they hand over Catholics in the island of Anjuanne to the Moors!"

But, as Mr. Edwardes observes, the Viceroy's fears were not well grounded; "for, from 1665 onwards, no authentic instance exists of any native of India, Christian or otherwise, fleeing from persecution by the British as the Brahmans of Bandora did in 1677 from the illiberal actions of Portuguese missionaries." * There were other reasons why the Portuguese authorities fought hard against the transfer. The landowners in Bombay were mostly Portuguese; they did all in their power to prevent the terms of the Marriage Treaty being carried out, for they were afraid lest the advent of the English might interfere with their rights in the soil. Their fears were well grounded, and but for Gerald Aungier they would have suffered more. Then there was the splendid harbour of Bombay, "the best port," wrote the Portuguese Viceroy, "your Majesty possesses in India, with which that of Lisbon is not to be compared." For these reasons the Portuguese delayed carrying out the terms of the Marriage Treaty on pretexts which were childish at times, and always futile. The main objection raised was that the eleventh article gave to the English only the port and island

* *Rise of Bombay*, p. 98.

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of Bombay without any of its dependencies. Mr. Edwardes agrees with Douglas * in holding that the dependencies were included; on the other hand, Da Cunha is convinced that the island of Bombay alone was ceded.† Be that as it may, the absence of any specific mention of the dependencies in the eleventh article gave rise to a series of disputes. When Marlborough found the Portuguese unyielding and his position on the western coast insecure, he contented himself by demanding the cession of the port and island of Bombay alone, which were strictly within the terms of the treaty. But as Sir Abraham Shipman had not arrived with the fleet, the Portuguese Governor awaited his arrival, refusing Marlborough permission in the meanwhile to land his troops on the island. When Sir Abraham arrived and produced his credentials, which included a sealed letter written in Latin and Letters Patent in English, the Viceroy objected to the letter as it contained some defects, and also to the Letters Patent as they were not signed by the King. These difficulties were not foreseen by the English plenipotentiaries, and they were greatly embarrassed. Having no suitable place to land their troops at, they applied to Sir George Oxenden, who was then Chief of the English factory, for permission to land them at Surat. But the advent of the English fleet had aroused the jealousy of the Mogul Governor, who was not then

* Douglas is emphatic on this point. "There can be no manner of doubt," he says, "that Salsette was included in the arrangement, as it was distinctly traced out in the map submitted to the commissioners as part of the territory to be ceded when the Marriage Treaty was being drawn up."—*Bombay and Western India*, i. p. 87.

† Regarding the action of the Portuguese and the construction they put on the wording of the eleventh article, the following entry from Pepy's *Diary*, dated May 15, 1663, is interesting: "The Portuguese have choused us in the island of Bombay in the East Indies: for after a great charge of our fleets being sent thither with full commission from the King of Portugal to receive it, the Governor by some pretence or other will not deliver it to Sir Abraham Shipman, sent from the King, nor to my Lord of Marlborough, which the King takes highly ill, and I fear our Queen will fare the worse for it. . . . Above all things it seems strange to me that matters should not be understood before they went out. And also that such a thing as this, which was expected to be one of the best parts of the Queen's portion, should not be better understood; it being, if we had it, but a poor place and not really so as was described to our King in the draught of it, but a poor little island; whereas they made the King and Lord Chancellor and other learned men about the King to believe that that and other islands which are near it were all one piece."

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in a pacific mood. So, though Marlborough had proceeded with his troops to Swally Hole, Oxenden was obliged to beseech him to repair abroad, "since the jealousy of the Moors was such that unless they did, they vowed the Factory a sacrifice." The royal officers were, therefore, forced to retrace their steps. There was only one wretched little place, the uninhabited island of Anjediva, south of Goa, which was available, and there the five hundred troops were landed. A more unhealthy spot even on that sickly coast could not have been selected. The result was that nearly three hundred of the troops died through the effects of a deadly climate—though Fryer adds that several of them died through their own intemperance.* This was the first instalment of the price paid by the English for the acquisition of Bombay, a sacrifice which then seemed too great for the object to be gained.

In the meanwhile, a long and bitter correspondence had ensued between England and Portugal, and between these countries and their accredited agents in India. Charles II. was greatly incensed at the conduct of the Portuguese, and the King of Portugal again wrote to the Viceroy to give over to the English peaceable possession of Bombay with as little delay as possible. In order to remove any doubt as to the person to whom Bombay should be handed over, King Charles issued the following commission in favour of Sir Abraham Shipman, which, after the usual recitals, said:

"Be it therefore known, that, confiding in the prudence and integrity of the faithful Abraham Shipman, our beloved subject, Knight of the Golden Ensign and Gentleman of our Privy Council, we have made, ordained and deputed, and do by these presents make, ordain, constitute, and appoint our true and indubitable Commissary Deputy and Attorney to take possession of the said port and island of Bombay, giving and granting unto the said Abraham Shipman our true and lawful powers and authority to receive in our name and for our use the said port and island of Bombay, together with the fortress and other things belonging to us by the contract." †

* A later writer seems to support Fryer in this view. "But during his (Marlborough's) absence," he observes, "the unhealthiness of the climate, seconded by intemperance, had made havoc among the unfortunate persons who had been carried to Angediva; three hundred of them had perished; the few who remained were admitted in the year 1664."—*An Historical Account of the Settlement and Possession of Bombay by the English East India Company*, 1781.

† *The Portuguese in India*, by F. C. Danvers, ii. p. 340.

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By virtue of this commission, Sir Abraham Shipman appointed Humphrey Cooke, his own Secretary, Vice-Governor, on April 5, 1664, and forwarded a copy of his orders, duly certified and attested by proper officers, to Goa. The Portuguese Viceroy felt that his supremacy over Bombay was fast slipping away, and the time had come when not only the port and island of Bombay, but even its dependencies, must be handed over to the English. He made one last effort to retrieve the position. He suggested the purchase of the island, and put the maximum price at £125,000. That Viceroy had in him something of the prophetic spirit of Gerald Aungier, for he knew and appreciated the value of Bombay, and must have built high hopes on its future. But his almost pathetic appeal fell on deaf ears.

"I confess at the feet of your Majesty," he wrote in January, 1665, "that only the obedience I owe your Majesty, as a vassal, could have forced me to this deed [*i.e.*, the cession of the island], because I foresee the great troubles that from this neighbourhood will result to the Portuguese; and that India will be lost the same day in which the English nation is settled in Bombay."

The Viceroy could not have pitched his appeal in a more earnest tone, but it was of no avail. The death of Sir Abraham Shipman in 1664 gave another opportunity to the resourceful Viceroy to put off the evil day. The Commissioner seems to have breathed his last at Anjediva, a place forsaken alike by God and man, except for the few soldiers who had to fight hard against disease and isolation. He had made his will, but could not appoint his own successor to the post he then held. The Portuguese Viceroy thereupon addressed himself to the Supreme Court of Goa, to inquire to whom he should give lawful possession of the town and island of Bombay, as the Royal Commissioner had died and the powers delegated to him by the King of England were not extended to any one else. The Court replied that as Humphrey Cooke had been appointed Vice-Governor by Sir A. Shipman by virtue of his commission, the island should be handed over to him. The Viceroy had no alternative but to abide by this decision. Cooke was also pressing hard for the possession of Bombay. Portuguese chroniclers had the audacity to trifle with his name and mutilated

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it horribly. Indeed, it was actually disputed if "Inofre Coque," as he was styled by the Portuguese, was the same person as Humphrey Cooke! Cooke was losing patience—and no wonder. For nearly two years he had to remain on the island of Anjediva because the Portuguese would not conform to the terms of the Marriage Treaty, and also because the President could not allow him to approach the Swally Hole and land the troops at Surat. Cooke has been blamed for accepting the possession of the island of Bombay without its dependencies, and with the conditions which the Portuguese imposed upon him. But he had to choose between this and perhaps the total loss of the men under his command.

"It may have reasonably occurred to Cooke," says Mr. Edwardes, "that by insistence upon the full terms of the marriage-treaty he was likely to indefinitely prolong the negotiations, and might even be obliged to return to an island, the climate of which had already slain a large number of his compatriots: that, under these circumstances, it was better policy to take Bombay with all the restrictions and disadvantages that the Portuguese might impose, and trust to overthrowing or counteracting them, after he and his men had the island in their grasp." *

It is easy to find fault with the *motive* underlying this action after the lapse of two centuries and a half, but, under the circumstances in which Cooke found himself, he is deserving of pity rather than blame. The preliminaries of the Instrument of Delivery and its Articles were at length settled, and Cooke entered upon the possession of the port and island of Bombay early in January, 1665. This was an event the importance of which was not lost sight of by the English, in spite of the difficulties and humiliations they were subjected to. After the death of Sir Abraham Shipman, Cooke became "Governor of all the Forces of His Britannic Majesty in the Island of Bombay in the East Indies"—rather an imposing title, but sadly divested of its dignity by the death-roll at Anjediva. There was no triumphal arch raised to welcome to Bombay its first Governor under the Crown: neither did trumpets announce his entry nor guns proclaim the coronation of this uncrowned king. Never-

* *Rise of Bombay*, p. 103.

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theless, the manner in which he took possession of the island was most effective, if not picturesque. Cooke

"took himself personally the possession and delivery of the said port and island of Bombay, walking thereupon, taking in his hand earth and stones, entering and walking upon its bastions, putting his hands to the walls thereof and walking also on the said island, taking into his hands the earth and stones thereof, and making all other like acts which in right were necessary without any impediment or contradiction." *

Imposing as was this ceremony, it was also humiliating. For Cooke did not get all that the Earl of Marlborough and Sir Abraham Shipman had contended for under the terms of the Marriage Treaty. He was practically forced to enter into a Convention which reflects little credit on the *bonâ fides* of the Portuguese. They found him in a situation peculiarly difficult, and took advantage of it. Under the terms of this Convention only the port and island of Bombay, without any of its dependencies, passed into the hands of the English. The result was that the Portuguese harassed them by inflicting heavy imposts upon all boats which passed Karanja or Thana, and these proved so burdensome that Cooke was obliged to resist their unjust demands. The loss of three hundred souls at Anjediva seemed too heavy a price to pay for the possession of "a poor little island," as Pepys peevishly described Bombay in his *Diary*. It was at one time doubtful if even Mazagaon, Parel, and Varli could be considered as part and parcel of Bombay. Colaba was certainly out of the question, and as Sion, Dharavi, and Vadala formed part of the separate estate of Mahim, the English had no right to them. Salsette, Trombay and Karanja, and the Elephanta, Butcher, and Hog Islands were equally outside the purview of the Articles of Delivery. But this was not the only humiliation: the Convention contained other terms equally disadvantageous to the English. It would be tedious to refer to them in detail: the most important of them may be conveniently summarised as follows:

"That the Portuguese, or others, may freely come, sell, buy, and trade at their Islands and Countries through their port of Bombay, and be free of all payments; that the said freedom of trade shall be particu-

* Da Cunha's *Origin of Bombay*, p. 261.

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larly understood at Bundura [Bandora] and other the Creeks of Salsette, though under the English Artillery; that the runaways shall be protected; that the English shall not meddle with matters of religion, on pain of forfeiting their right in the island of Bombay; that the inhabitants shall enjoy or sell their estates; that no runaways shall be admitted or detained upon the pretence of changing their religion, on either side; that the Lady * in whom the Government of Bombay was, may yet freely enjoy her estate; that no inhabitants shall lose their right, either patrimonial or what is held from the Crown, but it shall descend and they may alien, unless they forfeit, according to the laws of Portugal; that the ecclesiastics shall not be molested, but shall have their churches free; and that the inhabitants who pay their tribute to the King shall pay no more to the King of England." †

One has only to glance at these terms to know how totally unfair they were. It is easy to trace in them the hand of the Portuguese landholders and missionaries in Bombay, who were extremely jealous of any infringement of their rights, and fought with all their might against the English taking possession of the island. The Convention was never ratified by either the Crown of England or the King of Portugal. Charles II. was constrained to disavow it, twelve years after, in terms which were as unequivocal as they were strong. In a letter addressed to the Viceroy of Goa, dated March 10, 1676, his Majesty expressed the hope that

"our sovereign rights in the Port and Island of Bombay and their Dependencies, will be vindicated from that very unjust capitulation which Humphrey Cooke was forced to submit to at the time when that place was first transferred to our possession: Which capitulation neither he, Humphrey, was empowered to come into, nor any one else to impose upon him, in contravention to a compact framed in so solemn and religious a manner. We therefore are determined to protest against the said capitulation as prejudicial to our Royal Dignity, and

* This was the Portuguese lady named *D. Ignez* de Miranda, widow of D. Rodrigo de Monçanto, who was the sole proprietress of the caçâbe of Bombay when it was made over to Humphrey Cooke. She was well-known at the time as the "Senhora da Ilha," the Lady of the Island, and so greatly respected that the Portuguese made it a condition of the delivery of the island that she should be allowed free enjoyment of her estate as before. It was at her historic house, over the "delicate garden" of which Fryer goes into such raptures, that the Instrument of Delivery was signed.

† From the MS. Book presented by Sir Michael Westropp to the Bombay High Court Library.

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derogatory to our Right, which we hold in the higher estimation for coming to us in part of the Dowry with our aforesaid dearest Consort." *

In the same letter the King drew attention to the hardship entailed upon his subjects by the Portuguese inflicting heavy imposts on them at Thana and Karanja, "which are not less inconsistent with our Royal Sovereign Right than contrary to the Laws and Customs of all Nations." It took twelve years for the King to disavow Cooke's Convention : † its unfortunate author, however, repudiated his own contract within a much shorter period. Cooke's object in acceding to these unjust terms was to save himself and his men endless misery and probable death at Anjedeva. Once he had the upper hand and held

* With regard to this and some other quotations bearing on the point, a free use has been made of a MS. Book in the High Court Library, which bears on the cover the following inscription: "Presented to the High Court Library by Sir M. R. Westropp, A.D. 1882." It is probable that Sir Michael had this bulky volume prepared soon after deciding the case of *Naoroji Beramji* v. *Rogers*, for he must have found considerable difficulty in writing his judgment for want of proper materials.

† Another attempt was made by the Portuguese, in 1699-1700, to induce the Government of Bombay to form a treaty recognising this Convention, but it completely failed (4, Bombay High Court Reports, 85). The proposed treaty contained five articles, all of which were rejected. These articles, and the reasons for their rejection, have been summarised by Anderson as follows : "By the first it was to be engaged that such conditions should be observed as had been accepted by Captain Humphrey Cooke when he took possession of the island. This was refused because the conditions had been made by Cooke under compulsion, and were subsequently disallowed by Charles II. By the second article an offensive and defensive alliance was to be established between the English and Portuguese, such as had been arranged between the two Crowns in the original articles of capitulation : but it was declared that those articles were cancelled when the King of Portugal had refused to assist the King of England in his war with the French and Dutch. The third declared that the lands of Portuguese residents in Bombay which had been confiscated should be restored : this was refused on the ground that the proprietors had run away and assisted the Siddi in making war against the English. The fourth proposed that the English should cease to demand customs from such subjects of the King of Portugal as imported goods from Bandora : this was refused because the English claimed the customs as one of the royalties ceded to them by the Crown of Portugal. According to the fifth, all coolies and other natives who should run away from Salsette or Bombay were to be given up by the contracting parties ; but as the English did not see why they should send back to a state of slavery such as were discontented with the evils of Portuguese rule, this article was also rejected."—*The English in Western India*, pp. 164-165.

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Bombay in his grip, he repudiated the terms, one by one, with all speed. Almost his first act after signing the Convention was to seize some land contiguous to the island on the flimsiest of pretexts. Referring to this, the Portuguese Viceroy wrote to his royal master:

"The first act of Mr. Humphrey, who is the Governor of that island, and whom I knew in Lisbon as a grocer, was to take possession of the island of Mahim in spite of my protests, the island being some distance from the island of Bombay, as your Majesty will see from the map which I send herewith. He argues that at low tide one can walk from one to the other, and if this is conceded your Majesty will be unable to defend the right to the other Northern islands."

Not only was this conceded, but Cooke's action was upheld and the King of Portugal found himself unable to retain possession of the other islands. Sion, Dharavi, and Vadala passed out of the hands of the Portuguese, and at the end of Cooke's career the port and island of Bombay included all the lands except Colaba and Old Woman's Island. Cooke must have had some capacity as an administrator. For he felt that territorial acquisition would be of little practical use without men to populate and cultivate the barren lands. So he induced outsiders to settle down in Bombay, and promised them security of life and property and also religious freedom. This forms the keynote of the policy of the early Governors of Bombay. They wanted to make it "the flourishingest port in India," and employed these two excellent devices for the purpose. But while Cooke was consolidating what little power he then possessed and extending the boundaries of the island, he was digging his own grave. His Convention had exasperated the authorities in England, and they made him atone for it by instant dismissal. He had incurred the displeasure of the Portuguese by openly violating the terms of the Convention. Moreover, his action in inviting people to settle down in Bombay had excited the jealousy of the Moors and found little favour with the English factory at Surat. The Mogul Governor did not contemplate the removal of the factory from Surat to Bombay with anything like equanimity, and Cooke's action must have made him uneasy. It was for this reason that the President and Council disapproved of it, for the Mogul Governor

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might have again vowed the factory a sacrifice. They even recommended the Court of Directors to solicit the King's permission to build a factory at Bombay, explaining at the same time that this project would be impracticable unless proper arrangements were introduced for the government of the island, and persons appointed duly qualified to administer its affairs under fixed regulations. But the royal city of Bombay refused to submit itself to the indignity of being turned into a mere factory.

One might have felt some commiseration for the ignominy in which Cooke's after-career was enveloped if a humiliating Convention had been the only charge preferred against him. He had to contend against heavy odds, and a less determined and bold man might have broken down. Unfortunately, however, Cooke succumbed to temptations, soiled his reputation, and brought disgrace upon himself and his countrymen. When he took over Bombay in 1665, after signing the improvident Convention, or the Treaty of Surrender, as it is otherwise known, he had neglected to take the obvious precaution of ascertaining the King's rights in the large estates on the island, and the rights of the landholders in them. This led to much confusion in the law relating to land tenures in Bombay, and there were endless disputes between the King's officers and the Portuguese estate-holders, which were settled by the masterly Convention of Gerald Aungier in 1672. Sir Gervase Lucas, the Governor appointed by the Crown in 1666 to succeed Cooke on his recall, referred to this difficulty when he observed in his report that, from the indefinite conditions on which Cooke had received the island, "it was impracticable to ascertain which of the inhabitants were legally possessed of sufficient titles to their estates, no stipulation having been made relative to the King's sovereignty of the soil, as some of the best estates in the island refused to pay rent, and produced titles which could not be disputed, though believed to be fictitious.* There is evidence to show that Humphrey Cooke, the first Governor of Bombay, had a large hand in granting these fictitious title-deeds, and according to Douglas, "the manufacture of which was connived at by Cooke himself, and for which he had taken bribes." Cooke must have made a respectable fortune by these malpractices, but it did not

* *Proceedings of the Bombay Geographical Society*, iii. (June–August, 1839), p. 4.

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help him to escape the fate that overtook him. He was charged with fraud and embezzlement of a daring character. On an inquiry instituted by Sir Gervase Lucas into the proceedings and conduct of Mr. Cooke, it was found, among other acts of an improper nature, that, instead of carrying the revenues to his Majesty's account, he had extorted the sum of 12,000 xeraphins from the inhabitants and converted it to his own private use, as was proved by his receipts. Almost the first act of Sir Gervase on taking over the reins of government was to throw Cooke into prison for his mismanagement of Sir Abraham Shipman's estate.* It seems incredible that the first Governor of Bombay appointed by the Crown should have been found guilty of such serious delinquencies, but the fact is beyond dispute. On dismissal Cooke seems to have turned a rebel, for he went over to Goa and placed himself under the protection of the Jesuits. The last we hear of him is on the death of Sir Gervase Lucas on May 21, 1667, when he claimed the right to succeed him in the Government of Bombay. He was laughed at and summarily ejected by the Council. Thereupon he went over to Bandora, where he was welcomed by the Jesuits, for they meditated revenge on the English, as Sir Gervase Lucas had confiscated certain lands belonging to them on the ground of their treason. With their help Cooke organised a levy for the capture of Bombay, but was frustrated in the attempt. He was proclaimed a rebel and a traitor, and refused any countenance or protection by Sir George Oxenden. Thus ends the chequered career of Humphrey Cooke, the first Governor† of Bombay under the Crown.

Sir Gervase Lucas, a staunch Royalist, assumed the governorship of Bombay on November 5, 1666, and appointed Mr. Henry Gary Deputy-Governor. His period of office lasted for only a few months, and, although it is not signalised by any event of far-reaching importance, his time must have been fully occupied. The affairs in Bombay at the time were all out

* Da Cunha's *Origin of Bombay*, p. 269.

† Douglas says he was not a *pukka* Governor. He made himself Governor, and a most *kachha* one at that. This is how the oft-quoted historian of Bombay summarises the evil deeds of Humphrey Cooke: "He purloined the revenues, he accepted bribes, he manufactured title-deeds, he became a rebel against the Government he had sworn to defend, and, worst of all, when poor old Shipman died, leaving £4,420 after his three years' service, Cooke, who had been his Secretary, charged his widow 15 per cent. on the estate" (*Bombay and Western India*, i. p. 60).

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of joint, thanks to the cupidity and villainy of Cooke. But his successor was a man of marked ability and determination, who grasped the situation well and faced it manfully. He must have been a man of action too, as evidenced by the forfeiture of lands belonging to the Bandora Jesuits as a punishment for their rebellious conduct. Sir Gervase was, however, vouchsafed too short a lease of life to settle all the affairs in Bombay and put the government of the island on a firm basis. His relations with Sir George Oxenden were rather strained, but we may conclude that these two Governors, one under the Crown and the other appointed by the Company, must have come to a happy understanding, in view of the sympathetic reference made by Oxenden to Sir Gervase's death, "expressing his regret for the loss of an officer whose exertions and probity had been highly honourable." Captain Henry Gary, the Deputy-Governor, installed himself at Bombay on Sir Gervase's death, but his rule, too, was short-lived. He fell out with the President and Council at Surat over the issue of navigation passes. He questioned their right to issue these passes, and they more than doubted his. In reply to the haughty demand of Gary, "the Governor of the Island of Bombaim and Commander in Chiefe of all His Majesty's Fforces in India," calling upon the President and Council at Surat not to issue passes, the latter said, "wee cannot lay downe this so ancient a custome and privilledg," though they promised not to be profuse in giving them "untill the Company give us their order to ye contrary." But Bombay persisted, and Surat remained stubborn. The result was an *impasse*. Much bitterness is noticeable in the correspondence that ensued on the subject. It was referred to the authorities in England, who were weary of the whole affair. Even then they were doubtful as to the ownership of the port and island of Bombay. For in reply to the report of Sir Gervase Lucas, which was submitted to a committee for consideration, they gave it as their opinion that it would be improper to incur any great expense, "from the uncertainty whether the island of Bombay was in possession of His Majesty or not." * The King was at a

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 23. This seems rather inexplicable, for even the Portuguese did not contend that the island of Bombay did not belong to the King of England by virtue of the Marriage Treaty. Only the boundaries of Bombay were in dispute, not the island itself.

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loss to know how best to get out of the difficulty. Somebody wiser than his compeers suggested the transfer of Bombay to the East India Company. A similar suggestion was hinted at in a letter written by the President and Council at Surat to the Court of Directors. We may be sure that Charles II. was only too delighted to part with Bombay. Different motives have been assigned by different writers for the transfer, but Mr. Edwardes' surmise is perhaps nearest the mark.

"The true motive," he says, "probably was the complete indifference of the King to the value and welfare of his lately-acquired possessions, and the very keen desire of the Council at Surat, firstly to put an end to the quarrels which had arisen between themselves and the Bombay Governors on the question of the issue of the navigation passes, and secondly, to obviate the hostilities with the natives of India, which were occasioned by the high-handed actions of the Crown representatives, and for which the powers in India held the Company responsible."*

Whatever the real motive, however, suffice it to note that by the Royal Charter of March 27, 1668, the port and island of Bombay were, with all the necessary formalities, transferred to the East India Company.†

* *Rise of Bombay*, p. 106.

† The following statement of the revenue of the island, submitted to the King by Mr. Gary, may not be uninteresting, as showing the money-value of the grant of Bombay to the East India Company:—

Amount of Rent in Rupees.				Xeraphins.		
6,488	2	13	Rent of Mazagaon	9,300	0	40
3,321	1	69	,, Mahim	4,797	2	45
1,645	3	54	,, Parel	2,377	1	56
1,203	1	20	,, Vadela	1,738	0	40
547	0	40	,, Sion	790	0	60
395	1	48	,, Veroly	571	1	34
4,392	1	80	,, Bombaim	6,344	2	61
6,611	2	16	,, {Tobacco staunt or Frame ...}	9,555	0	0
1,661	2	16	,, Taverns	2,400	0	0
12,261	2	16	The account of Customs ...	18,000	0	0
12,261	2	16	,, Cocoanuts ...	18,000	0	0
50,640	0	88		73,870	1	18
801	3	58	More may be advanced ...	1,129	1	62
Total 51,542	0	46	Total	75,000	0	0

Which at 13 xeraphins for 22s. 6d. sterling amounts to £6,490 17s. 9d. (The above statement has been taken from the MS. copy presented to the Bombay Geographical Society.)

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A careful study of this charter, which marks another epoch in the history of the East India Company, will not only be interesting, but most useful for our purpose. It confers, for the government of the island, the fullest powers which any form of words could convey. In short, it concedes to the Company both *imperium* as well as *jurisdictio*, and forms a model on which the legal establishments should be framed to meet the requirements of the country. It is on the provisions of this charter that many of the most important functions of government and of jurisdiction, exercised not only in Bombay but in India generally, were based. The point that struck Sir Erskine Perry most forcibly in it was the freedom which it allowed the grantees in governing and legislating for the various communities of India.

"Indeed," observes the learned Chief Justice, "it displays such comprehensive views of the powers which should be necessarily conferred for the government of a distant, already peopled, dependency, and contrasts so favourably with the obscure language of some of the later charters of justice, that I think we should do right in ascribing (it?) to the pen of Sir L. Jenkins, or some other of the eminent civilians of the day." *

In the opinion of Sir Courtenay Ilbert, the Charter of 1668 marks the transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government.† Sir Michael Westropp also refers to it in detail in his well-known judgment in *Naoroji Beramji* v. *Rogers*, as it very clearly defines the rights and powers of the local authorities, on the one hand, and the rights and obligations of the inhabitants on the other. To begin with, this charter first of all recites the Marriage Treaty of 1661, by which the island was ceded in full and perpetual sovereignty to the Crown, and gives, grants, transfers, and confirms to the London Company the port and island of Bombay, "with all the rights, profits, territories, and appurtenances thereof whatsoever, and all and singular royalties, revenues, rents, customs, castles, forts, buildings, and fortifications, privileges, franchises,

* *Perozbai* v. *Ardeseer Cursetji*, Perry's Oriental Cases, p. 64.
† *Government of India*, p. 20.

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pre-eminences and hereditaments whatsoever" in as large a manner as the Crown of England enjoyed or ought to enjoy them under the grant of the King of Portugal in the treaty of 1661, "and not further and otherwise," and created the London Company "the true and absolute Lords and Proprietors of the Port and Island and premises aforesaid, and of every part and parcel thereof," which appertained to the Crown of England by force of the grant of the King of Portugal, "and not further or otherwise" (saving the allegiance due to the Crown of England, and its royal power and sovereignty over its subjects in and over the inhabitants of the port and island) "to have, hold, &c.," the said port and island," &c., "unto them," the said Company, "to the only use of them," the said Company, "their successors and assigns for evermore to be holden of us, our heirs and successors, as of the Manor of East Greenwich, in the County of Kent, in free and common socage, and not in capite, nor by Knight's service," at the yearly rental of £10, payable to the Crown. The latter clause was inserted in the charter for the obvious purpose of maintaining the ultimate reversion in the Crown, as indicated by the feudal tenure, as well as the "eminent domain" or sovereignty, and to secure the Crown's right of escheat, in case of the dissolution of the Company or otherwise.* It will be noticed that a curious phrase occurs in this clause, "as of the Manor of East Greenwich." What did the Crown exactly signify when it allowed the Company to have and hold the port and island of Bombay "as of the Manor of East Greenwich"? The whole idea of a manor is bound up with history and rests on custom. We do not generally hear of a manor until we hear at the same time that it existed from time immemorial. When once a manor is shown to exist its limits are finally ascertained, and the lord of the manor can do nothing to extend them by purporting to grant other land which may belong to him "as of the manor" in question. The Crown could not, therefore, make Bombay part of its manor of East Greenwich, and the words "as of" do not mean "as part of," but "as though of." Their sole object was to define exactly what the incidents of tenure were to be. In this connection the following brief note on the original history of manors, kindly

* *Rex* v. *Cowle*, 2 Burr, p. 834.

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furnished by Dr. T. Baty, D.C.L., LL.D., Barrister-at-Law, Honorary Secretary of the International Law Association, will be found interesting:—

"The relations of an English king to English land are twofold. Let us use the convenient formula, 'the Crown,' as meaning the king under the restraints of constitutional convention. Its rights relating to land are (1) the 'eminent domain' or *international* ownership, *i.e.*, its rights to do as it pleases with its own territory, and all persons therein, so far as foreign nations are concerned; (2) the ultimate reversion, within the limits of English law, of the *civil* ownership of all English land. This latter right may mean in practice very little, since the land is generally in the hands of tenants in fee who are practically absolute owners. These are in some cases, but by no means usually, freeholders of Crown manors. A manor is difficult to define because of its purely historical origin. Manors grew up wherever a powerful lord (whether king or vassal) settled his followers around him to hold their land as his feudal vassals and on terms of doing him feudal military and judicial service. They have, since legal memory (*i.e.*, 1189 A.D.), been limited in number and extent. It has for seven hundred years been impossible to create a new manor, or to extend the bounds of an old one. How and why did the Crown purport to grant Bombay 'as of the manor of East Greenwich'? Let us look at the charter. The 'eminent domain' came over to Charles II. from Portugal, and we may assume that the Carolingian lawyers never doubted but that the municipal right of an ultimate reversion in the soil came along with it—indeed, they did not clearly distinguish between the two—though it may be that the civil law of Portugal gave its king no such proprietary right in the soil. The 'eminent domain' includes the right of legislation, a royal 'franchise' with which we are now very familiar, and it is apparently this 'eminent domain' over Bombay which the charter first grants to the Company, and then it creates them 'lords and proprietors' of the port and island, thereby dealing with the lesser proprietary right of the Crown—*i.e.*, its ultimate reversion according to law. It splits up this reversion, granting a fee-simple tenancy (expectant on the cessation of the estates of the actual owners) to the Company, while retaining the nominal reversion (shadow of a shade) still in itself. But this does not explain the manor of East Greenwich. A Crown grantee need not be a freeholder of a Crown manor; and such manorial freeholders have few (if any) special obligations. Yet in the case of a manor the scanty and half-obsolete obligations of its freeholders are at any rate known and defined (if only by the steward of the manor), and the process for the recovery of quit-rents is familiar. (It is rare, but not unknown, for freeholders within a manor to be subject also to the payment of 'heriots,' and—as in Cornwall—to have no right to minerals.) At all events, it seems always to have been regarded as advisable to conclude all question, by reference to some particular set of customs. As early as James I. the charter of

the grantees of Virginia specified that the holding should be 'as of the manor of East Greenwich,' and as late as George III. (in 1800) the same stipulation was made regarding Sierra Leone.* Most of the American States were originally granted on charters containing a similar clause. Pennsylvania and Maryland were held 'as of the manor of Windsor in the cty. of Berks," Georgia as of the manor of Hampton Court in Middlesex, whilst New York and New Jersey (granted to the King's brother, the Duke of York) were held without any such definition." †

But this is a digression. Let us resume our examination of the terms of the charter. After this clause comes the usual reservation of the free exercise of the Roman Catholic religion to the inhabitants of Bombay, followed by the proviso that "the said inhabitants, and other our subjects in the said Port and Island, shall and may peaceably and quietly have, hold, possess, and enjoy all their several and respective properties, privileges, and advantages whatsoever which they lawfully had or enjoyed, at the time of the surrender of the said Port and Island to us as aforesaid, or at any time since, anything in these presents contained to the contrary notwithstanding." Sir Michael Westropp was of opinion that this proviso did not confer upon the inhabitants of the island any other or higher rights than they were entitled to under the Marriage Treaty of Charles II. The next two clauses of the charter are of more direct importance to us. The first of these recites that, as the island is granted to the Company as aforesaid, "it is therefore needful that such powers, privileges, and jurisdictions be granted unto them as be requisite, for the good government and safety thereof"; and therefore enables the Company, "as a general court, to establish under their common seal, any laws whatsoever for the good government of Bombay, and the inhabitants thereof, and the same to revoke, as they think fit," and it further empowered the Company "to ordain, make, establish, and under their common seal to publish any laws, ordinances, and constitutions whatever for the good government and other use of the said fort (port?) and island of Bombay and the inhabitants thereof," and also "to impose and provide such pains and

* Clarke's *Colonial Law* (London: Sweet & Maxwell, 1838).

† Story, *Constitution of the U.S.*, §§ 42, 59, 61, 82, 87, 96, 104, 122, 131, and 172.

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punishments by fines, amercements, imprisonment of the body, and, when the quality of the offence shall require, by taking away life and member, as to the said Court shall seem fit," provided always "that the said laws, pains, penalties, &c., be consonant to reason, and not repugnant or contrary,* but, as near as may be, agreeable to the laws of this our realm of England, subject to the provisos and savings hereinbefore contained" (referring to the proviso securing the free exercise of the Roman Catholic religion to Portuguese subjects, which, though repugnant to the then law of England, the Company was thus disabled from repealing).

A separate clause provides that it shall be lawful for the Company "by themselves, or by their Governor or Governors, officers and ministers, &c., according to the nature and limits of their respective offices and places within the said port and island of Bombay, the territories and precincts thereof, to correct, punish, govern, and rule all and every the subjects of Us, our heirs and successors, that now do or at any time hereafter shall inhabit within the said port and island, &c., according to such laws," &c., as by the said Company "in any general Court or Court of Committees as aforesaid, shall be established, and to do all and every other thing and things which unto the complete establishment of justice do belong, by Courts, Sessions, forms of judicature, and manners of proceedings therein like unto those established and used in this our realm of England, although in these presents express mention be not made thereof and by Judges and other officers," by the Company, or by the "Chief Governor or Governors of the said port and island of Bombay to be delegated to award process, hold pleas, judge and determine all actions, suits, and causes whatsoever, of any kind and nature whatsoever, and to execute all and every such judgment, so always as the said laws, ordinances, and proceedings be reasonable, and not repugnant or contrary, but as near as may be agreeable to the laws, statutes, government, and policy of this our Kingdom of England, and subject to the provisos and savings herein." The same clause sanctions the use of military

* "Repugnancy" in this and similar charters, of course, means little else than repugnancy to the fundamental nature of law as understood in England, and does not extend to even the most salient departures from positive English precept.

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law for military purposes, or in case of rebellion, mutiny, or sedition. The next proviso referred to by Sir Michael runs as follows: That it shall be lawful for the Company, their agents, factors, and servants "to have, hold, exercise, enjoy, and execute all and singular the jurisdictions, powers, liberties, privileges, benefits, and advantages whatsoever within the said port and island of Bombay," &c., as they or any of them "may or can hold, use, exercise, enjoy, and execute by force and virtue of the Charter 13 Car. II., "in any other place or places of the said East Indies, or touching any other their plantations, &c., and servants, &c., &c., comprised or mentioned, or intended to be comprised, within our said Charter or letters patent, in as large and ample manner, to all intents, constructions, and purposes, as if the said jurisdictions, powers, liberties, &c., &c., were herein particularly mentioned and expressed." It may be noticed here that the large powers conferred upon the Company by this and other important clauses of the Charter of 1668 were to extend to all such places as they should subsequently acquire within the limits of their charter; and Perry, C.J., observes that "they form a sufficient foundation on which to rest any legislation that may have been exercised by them as to the Mofussil, up to the 13 Geo. III., c. 63." Only one more clause remains to be noticed before we close this rapid survey of a charter which has had such far-reaching results. This was the clause which provided that "all and every the persons being our subjects" (excluding, therefore, mere sojourners or aliens) "which do or shall inhabit within the said port and island, and every of their children and posterity, which shall happen to be born within the precincts and limits thereof, shall have and enjoy all liberties, franchises, immunities, capacities, and abilities, of free denizens and natural subjects within any of our dominions to all intents and purposes, as if they had been abiding and born within this our Kingdom of England." This clause, it will be observed, expressly confers the rights of denizenship on all his Majesty's subjects, which do or shall inhabit, and the rights of natural subjects on all who shall be born, within the island of Bombay.*

A few events subsequent to the grant of this charter have been already noticed above. For instance, we have seen how

* Perry's Oriental Cases, p. 64.

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Sir George Oxenden felt the delicacy of his task in taking possession of Bombay from the officers of the Crown, and how warily he proceeded to take over the reins of government. We have also followed the Commissioners, Messrs. Goodyer, Master, and Cotes (Gerald Aungier would have been one of them, but he could not be spared, as he was then filling the important post of warehouse-keeper), to Bombay, and seen the admirable manner in which they dealt with the unsettled affairs of the place. Their time must have been fully occupied, for in a letter they wrote to their esteemed President they deferred writing about certain important matters, "having been so busily employed in several various affairs, and talking so much as some of us have lost our voices!" There is a gleam of pathos as well as humour in this little sentence. We would fain believe that they talked not in vain; they certainly seem to have regained their voices soon. Sir George Oxenden's all too brief visit to Bombay, and his personal management of its affairs and earnest efforts to establish good government on the island, have been noticed in the previous chapter. His successor, Gerald Aungier, will have a chapter (a volume would better describe the achievements of this sagacious and far-seeing Governor) all to himself. But before describing his career, let us see how Captain Henry Gary, the self-appointed Governor of Bombay under the Crown, and Captain Henry Young, the first Deputy-Governor of Bombay appointed by the Company, fared. With a heavy heart did Gary part with the possession of Bombay, and, as he himself wrote to the Secretaries of State, "though the unexpected change had much troubled him, he hoped that they would make the Governor and Committees of the East India Company sensible of his fidelity, and that he was deserving of remuneration." But it was the good fortune of Bombay that Gary was not allowed to lord it over her inhabitants for long, for he turned out as great a scamp as Cooke. The Portuguese must have hailed his downfall with delight, for in him they had found "an awful heretic" and a "great enemy of their nation." "Inofre Coque" was bad enough for them, but Gary was worse still. After the transfer of Bombay to the Company, Gary seems to have secured the Second Seat in Council, and was afterwards Judge of the island. Vain, headstrong, intriguing, and overbearing, it is easy to imagine what sort of judge he must have proved. There

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is a story told of him, vouched for both by Philip Anderson and James Douglas, men who may be safely relied upon for the accuracy of their accounts, which shows the way in which he must have administered justice to the inhabitants of Bombay. It is said that he once summoned a man to appear before his Court on a Friday, although he had been executed, according to the Judge's own sentence, on the previous Tuesday. "The Court waited," observes Anderson, "but death was guilty of contempt, and no prisoner appeared in spite of the fuddled Judge's mandate." * After Oxenden took charge of the government of Bombay, we hear little of Gary, though he seems to have hovered about the island whilst Sir John Child was Governor-General. He was roundly abused by the enemies of this unpopular Governor for the support he gave him in misruling the island. Of Captain Henry Young, the Deputy-Governor, we know even less. According to Anderson, he was "a drunkard, scoffer, and avowed despiser of the Christian religion." As Oxenden stayed in Bombay only for a few months, Young presumably administered its affairs till he was made to atone for his misdeeds a little later. As Deputy-Governor he must, no doubt, have administered justice to the inhabitants; but a judge who is "a drunkard and scoffer" cannot be said to be an ornament of the bench. The records are, however, happily silent about his administration of justice, the only fact known being that on January 22, 1669, he was tried and found guilty of serious charges. Of his trial we shall speak in another chapter. Suffice it to note here that he was despatched to England as soon as the trial ended.

Under such inauspicious circumstances began the government of the port and island of Bombay by the East India Company. Soon after, however, there came on the scene a man who not only justified the transfer by the Crown to the Company, but left a legacy behind him the benefits of which may be felt even to-day.

* *The English in Western India*, p. 97.

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CHAPTER IV

GERALD AUNGIER

IT has been remarked that the world does not know its great men. That part of the world which constitutes the town and island of Bombay certainly does not know much about one of its most famous and successful Governors—a man who towered above all the mediocrities who governed the island at the end of the seventeenth century. No history of Bombay can be said to be complete without a sketch of Gerald Aungier, under whose wise administration this city became the established seat of the Company's dominion. And an account such as this would fail of its purpose if it omitted to describe the efforts Aungier made to establish Courts of Judicature on the island, to appoint judges and other judicial officers to supervise the administration of justice, and to hold the scales evenly between his own countrymen and the heterogeneous mass of semi-civilised people he was called upon to govern. It was during his *régime* that the fountain of law first began to flow, pure and untainted, though it lost its purity soon after his death. Aungier seems to have discharged the duties of Chief Arbitrator at the time, and so keen was his sense of justice and so impartial and sound were his decisions that not a single instance is said to be on record in which either the plaintiff or the defendant had reason to be dissatisfied with his award. Aungier was, by virtue of his office, the Chief Justice of Bombay; he and his Council formed the Court of Appeal. There is no evidence to show that he was a lawyer, but his career furnishes ample testimony to the fact that he had in his youth imbibed those principles of justice and equity which are the birthright, so to say, of every righteous man. Were we to restrict our sketch of this remarkable man to

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his achievements in the sphere of justice, only a few words would be required. But such a restriction would be doing injustice to the man without doing justice to our undertaking. For, besides establishing Courts of Judicature, Aungier was the author of a series of reforms which directly affected the welfare of the inhabitants of Bombay, and indirectly the administration of justice on the island. For instance, when he modelled the several races inhabiting the town and island of Bombay into so many orders or tribes, appointing over each a chief or consul to manage their affairs; in short, when he raised the fabric of self-government by the inauguration of the *Panchayat* system, he gave the people the means of procuring justice for themselves. For this and other reasons we propose to give a brief sketch of the life and life-work of Gerald Aungier, in the confident hope that it may not be considered uninteresting or out of place in an account such as this.

The fact that strikes us at the outset in this connection is the obscurity in which Aungier has been allowed to lie in an unknown corner of Surat for more than two centuries, when lesser men, with their comparatively insignificant achievements, have been made known to the world. This is all the more curious when we find that almost every writer who has left an account of Bombay speaks of the man in terms of the highest praise. Hamilton, Fryer, Anderson, Da Cunha, Douglas, and others may be said to vie with one another in their appreciation of "that chivalric and intrepid man." Perhaps the most remarkable testimony is that of Alexander Hamilton, the sea-captain, who traded in the Indian seas for five-and-thirty years (1688–1723). We say "the most remarkable" because it is the least open to the charge of exaggeration. For Hamilton was an "interloper," and there was no love lost between him and the East India Company or its servants in this country. About the year 1674, he writes:

"President Aungier, a gentleman well qualified for governing, came to the chair, and, leaving Surat to the management of Deputies, came to Bombay and rectified many things that were amiss and brought the Face of Justice to be unveiled, which before lay hid in a single person's breast, who distributed her favours according to the Governor's direction. He erected a formal Court where Pleas were brought in and debated." *

* *A New Account of the East Indies*, i. p. 188.

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And on the next page he observes :

"The name of Mr. Aungier is much revered by the ancient people of Surat and Bombay to this day. His justice and dexterity in managing affairs got him such esteem, that the natives of those places made him the common arbitrator of their differences in point of traffick. Nor was it ever known that any party receded ever from his award."

The value of this testimony is heightened by the fact that these words were written forty-six years *after* the death of Aungier. The "ancient people" of Surat and Bombay knew how to sift gold from dross—how to forget the evil deeds of Gerald Aungier's unworthy predecessors and to enshrine in their hearts the memory of the man who toiled all his life with the single aim of ensuring their welfare. Fryer* is not less enthusiastic in his appreciation. Speaking of the period during which Aungier personally looked after the affairs of the city, he says :

"He came and took the Government in 1671, where these three years he has regulated affairs with that prudence that whereas he found a disaffected and incongruous Council, he has now knit them into a bond of at least seeming friendship, and does daily study to advance the Company's interest and the good and safety of the people under him." †

Anderson also refers to him as a man of high character, though he accuses him of "much Protestant zeal, but little Christian love."

The anonymous writer of *An Historical Account of Bombay* pays a glowing tribute to the administration of this wisest and most successful of her early Governors.

"Mr. Angier," he says, "president of the factory of Surat, being also disgusted by the arrogance of the Mogul Governor of that town, changed his residence and established himself at Bombay, where his prudence quashed the dissensions, his good management advanced the Company's interest, and his activity secured the island; insomuch, that in the Spring of 1672 the Dutch attempting a surprise, found the Fort so well guarded and everything in so good a condition that they immediately gave over the enterprise."

* Dr. Fryer came to Bombay about the time when Aungier was Governor. It is not improbable that the latter helped him in his professional career in India, which was so successful.

† *East Indies and Persia*, p. 66.

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The same writer, referring to Aungier's broadmindedness and religious toleration, observes:

"Many were invited by the freedom granted to all religions and the mildness of the Government; (that of the English, even when pushed to what would seem tyranny at home, appearing gentle to those who had felt Mahometan insolence and Portugueze bigotry) in-so-much, that from ten thousand souls, the utmost of its inhabitants when in possession of these, they were in the year 1764 augmented to sixty thousand."

Da Cunha, Douglas and Mr. Edwardes are modern writers whose works are easily accessible to all who care to know something about the early history of the island on which they live. Among these writers, Douglas deserves the greatest credit for portraying Gerald Aungier as he was, and devoting more than one chapter of his two highly interesting volumes on *Bombay and Western India* to a detailed description of his career as President of the Surat factory and Governor of Bombay. There are few pages in these volumes more interesting than those which speak of the life and work of Aungier. Douglas waxes eloquent over the qualities alike of head and heart of this good man, over his wisdom and farsightedness, his tolerance and sagacity, integrity and independence, ability and singleness of purpose. What was Aungier's great work, he asks:

"To weld," he answers, "into one homogeneous mass the discordant materials of Asiatic nationalities, to solve the problem which had never been solved before, as to how a great multitude of men of diverse religions and races should live together in peace and harmony, free from discord within and aggression from without—this was the work he set himself to do, and he did it."

Again, at p. 84 of the first volume, our historian observes: "The figure of Aungier stands out in bold relief on the page of history—the first man in India who taught us the art of self-government and the wisdom of dealing with our neighbours—sage in counsel and bold in action." But let us come to the man's own deeds, which will depict him better than the historian's pen.

Little is known of the early years of Gerald Aungier in India, much less of his childhood and youth in England. His name

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enables Douglas to surmise that he came from Angers,* in France, and that his forefathers, who were probably Huguenots, had fled to England after the terrible massacre of the Protestants on the eve of St. Bartholomew in 1572. Of his parents nothing more is known than that they came of a good stock. Young Gerald was in all likelihood trained in England, bred in the school of Cromwell rather than in the soft and silken manners of Charles II., as some of his actions later in life testify. He must have had a fairly good education, for the countless letters he wrote to his masters in England and his subordinates in Bombay and elsewhere display an extensive and wholesome reading. His allusions to Biblical and other authorities show that he was more or less familiar with classical literature, and could quote from it with telling effect. Douglas notices the change for the better in the letters and diaries written by Aungier after he succeeded Oxenden—a change representing the newer spelling and purer and freer style. He, too, like Sir George Oxenden, must have come out to India in the service of the Company at an early age, and risen in rank, step by step, till he attained the highest position in the gift of his employers—the governorship of the town and island of Bombay. In 1663 (it is impossible to say how old he was then, for the date of his birth is not known and there is no likeness nor any description of him now extant from which this can even be guessed) we find him occupying the post of warehouse-keeper—a post which has but little significance to-day, though it was of considerable importance then. Even as a factor Aungier seems to have made his mark and impressed his personality on all he came in contact with. Oxenden must have been favourably inclined towards him, for in a letter in that year he writes to his masters: "Gerard Aungier is yor humble supplyant that you would please to consider him in his sallery, as his quallity doth merritt." Aungier must have been in Bombay in 1662, ten years before he again visited it as Governor. For he was deputed by the Surat factory to accompany the Earl of Marlborough when the latter claimed the town and island of Bombay

* Angers is the name of a French town. Almost all French names, adds Douglas in a footnote at p. 72 of his first volume, since the Norman Conquest have been slightly altered on their introduction into England. In some early records Aungier is sometimes written Angers.

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on behalf of his Majesty the King of Great Britain. He had to go back to Surat with his dignity not a little ruffled and his opinion of the Portuguese by no means improved. But he had seen Bombay and was fascinated by the place. It was probably during this brief visit that he was struck with the possibilities of the island, and the historic hope was kindled within him of a splendid future for "the city which by God's assistance is intended to be built." He had probably formed this intention during his first sojourn in Bombay—and he adhered to it loyally. Not only did he build Bombay, but he founded it on a fabric which has withstood the ravages of more than two centuries, and has made it to-day one of the greatest cities in the world. The seven years that elapsed between this visit and the death of Sir George Oxenden on July 14, 1669, Aungier must have passed in the warehouse at Surat, ably discharging his duties as its keeper. On the occurrence of the latter event he became President of the Surat factory, a post which then carried with it the governorship of the port and island of Bombay.

In those days it was not an easy thing for the President to leave the factory and visit Bombay. There were many difficulties in the way, the greatest being to get the consent of the Mogul Governor, for without this it would seem that not even the Chief of the factory could leave the place. However, President Aungier managed to embark at Surat on January 11, 1670, and arrived in Bombay a few days after. Of his work in Bombay at the time, Campbell says that no details have been traced even in the Secretariat Records. But there are references to him and his work in the Surat diaries and letters which are highly interesting. On arrival it became his painful duty to investigate the accusations brought against Captain Henry Young, the Deputy-Governor, who was conducting himself in the most singular fashion. The next thing that engrossed his attention was the civil and military administration of Bombay. He was wise enough to see that without framing certain rules and regulations for the proper management of affairs it would be useless to initiate important reforms, and his first idea was that the island needed absolute peace and security. He therefore decided to establish Courts of Judicature which would inspire the confidence of the people in the *bona fides* of the new Government. The few months' administration of Bombay by Deputy-Governor

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Young had set people seriously doubting the wisdom of the transfer of the island from the Crown to the Company. Aungier knew this, and knowing it, at once applied himself to removing all just causes for apprehension and distrust.

On February 2, 1670, he convened a meeting at Bombay Castle, and issued certain orders for the administration of justice which will be noticed in detail in the proper place; only a brief summary of them will serve our purpose here. First of all he had a list made of the Englishmen who were on the island at the time, and ascertained their qualifications. Those who were found worthy of such trust were created justices and were asked to dispense justice to the inhabitants on specified days and at a particular hour. For this purpose he had the whole island divided into two parts, the first consisting of Bombay, Mazagaon and Girgaon, the other of Mahim, Parel, Sion, Warli and the Puckreys (Pakhadis or hamlets). The first bench of justices met in the Custom House of Bombay (near the present Town Barracks) on every Friday at 8 a.m. and the second in the Custom House of Mahim on every Wednesday at the same hour, three forming a quorum. They were empowered to hear suits and determine actions for sums not exceeding the value of 5 xeraphins (Rs.3½). Aungier knew well the sort of justice these "customers" would dispense, and by way of precaution he empowered the Deputy-Governor and Council to hear appeals in all suits exceeding in value 200 xeraphins, as well as in all actions treasonable, felonious, capital or criminal. In the Court of Appeal all trials were to be by a jury.* Aungier also made the most of the materials that were ready at hand. For instance, he arranged for the appointment of "Perbes" (Parbhu clerks) and other officers to look after the details of administration. He also decided to make use of a Portuguese resident, by name Simao Serrao, a man well read in the civil

* A Bombay Consultation dated January 31, 1670, refers to an order of the Honourable Company that all cases of difference between the English and the Portugals be decided by a jury, half English, half Portugal. At the same Consultation it was decided to publish a Code of Laws, no trace of which is now to be found. But it is worth noting that these laws were ordered to be translated into Portuguese and Kanarese. The preference given to Kanarese over the other vernaculars then in vogue in Bombay is explained by Mr. Edwardes by the fact "that the early population of these islands was to a large extent of southern or Dravidian origin" (*Rise of Bombay*, p. 2).

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and imperial laws, and one who by his experience and practice in the laws and customs of the Portuguese was eminently qualified to render the Company competent service in discovering their just rights and privileges. The English must indeed have found him of great help to them in the settlement of the land disputes between themselves and the Portuguese estate-holders in Bombay. Gerald Aungier remained in Bombay only for a short time during this visit, but he worked so hard and well that on his departure all the important affairs were virtually settled and the inhabitants felt secure in the enjoyment of life and property. Besides "unveiling the Face of Justice," as Ovington picturesquely describes Aungier's efforts to establish Courts of Judicature, he found time to strengthen the fortifications, to reduce the military establishment, and to have a survey made of the whole island with the view of ascertaining its total land revenue. He left Bombay for Surat in February, 1670, after appointing Mr. Matthew Gray Deputy-Governor, with a Council of four factors.

Once in Surat, Aungier found it most difficult to leave it for another visit to Bombay. Early in 1671, when he was about to embark, the Mogul Governor created such a disturbance that he was obliged to give up the idea. A month later it was the advent of Sivaji which prevented the English Governor from leaving Swally Marine. He was so long balked in his object that he felt anxious about the peace and security of Bombay, and suggested to the Directors that the seat of government should be removed thither from Surat. Fryer assigns another reason for this suggestion which seems probable: he says that Aungier was "distasted at the insolencies of the Mogul's Government at Surat and feared a second confusion of Government at Bombaim." * Whatever the reason, he wrote to the Court of Directors on February 3, 1671:

"And for that it hath unfortunately happened that for two years together y^or^ P^r^ hath bin hindered from going to Bombay to his owne trouble and no small detriment to your Island, we have thought it our dutys upon serious consideration of y^or^ affairs to offer you our humble advice, that it now seems consistent with your interest to settle your chiefe Government on your Island Bombay, and to that end you would please to order yor Presi^dt^ to reside there constantly, except

* *East Indies and Persia*, p. 66.

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extraordinary emergencys may require his repair to Surat or elsewhere."*

But it was not till sixteen years after, in 1687, that this wise suggestion was acted upon by the Court of Directors. Had it been acted upon earlier, the Company might have saved themselves much humiliation. In the same letter Aungier made certain proposals for the improvement of the town and island of Bombay which bring out perhaps the best qualities of the man. For it is in these proposals that we see his liberality and farsightedness, combined with his great tolerance and wonderful mastery of affairs. We have space here to refer to only a few of them. But even this brief reference will, we hope, show to the reader that we are underestimating rather than exaggerating the character of this remarkable man. Aungier, during his first visit, found that the cost of maintaining the island far exceeded its limited revenue. He therefore proposed the imposition of a tax on the inhabitants to meet all charges, but was careful to point out that it must be levied and proportioned

"in such nature as may be least burthensome to ye people and may not discourage strangers from coming to live with us; that it be levied only on land and not on any goods or merchandise, and the rather for that the land bears no charge at all nor hath don since it was in the Eng[s] possession."

Aungier proposed that certain charges be defrayed out of the collection of this tax, one of which was for

"building a fair Common House† wherein may be also appointed

* Forrest's *Selections*, i. p. 50.

† The remains of this Fair Common House are with us to this day, known as the "Mápla Por." "Mápla Por," writes Mr. Edwardes, "as it is named, that is to say, the gated enclosure of the Maplas, or half-Arab Mussulmans of the Malabar Coast, stands about 300 yards north of the north-west corner of the modern Elphinstone Circle on the west side of Borah Bazaar Street, immediately beyond its meeting with Gunbow Lane." This huge pile of buildings was designed by Aungier himself, and so good is the material used that, according to the same authority, "its ruined plinth and staircases constitute to-day one of the most ancient monuments of British dominion in this island" (*Rise of Bombay*, p. 112). A sketch of the "Mápla Por" will be found reproduced at the commencement of this volume.

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chambers for the Courts of Justice, warehouses or Granerys for corne, ammunition, &c., as also prisons for several offenders.

"Sallarys or wages for Publick officers, to witt

For the Governor
D. Gover^nr.
Treasurer
Accountant
Councell
} and his Assistants.

For the Secretary and his Assistants.

For ye Judge of ye Courts of Judicature and his officers.

For a Procurator Gen^ll and his clerks.

For a Publick Notary.

For a Sheriff or Chiefe Constable and so many officers under him necessary.

For such other officers as shall be upon serious consideration thought as necessary." *

Aungier was very hard on those who broke the laws either of God or man, and visited such breach with condign punishment. But he was never unreasonably hard even on the worst of offenders. He erected the Fair Common House right in the heart of the bazaar, so that the unfortunate prisoners could beg for alms of the passers-by. Oblivious of self, he was always seeking the good of others—even of those who deserved ill of him. When he had finished building this house, the Company wrote to him to the effect that in their opinion he was not managing the affairs of Bombay as economically as he should. Thereupon he sent in reply an able defence, pointing out the necessity which had urged him to undertake these reforms and justifying every penny that had been expended on the improvement of the island. But if even this reply did not satisfy his masters, he expressed his willingness to defray the cost of the Fair Common House out of his own private purse, provided the Company paid him reasonable rent for the time that it was used as a Court of Judicature. So much for the sturdy independence and disinterestedness of Gerald Aungier. Closely allied to his scheme for the distribution of justice was his proposal to establish a sort of Panchayat, where even the poorest might find the means of procuring justice for themselves. He must have felt that the European "customers" would not be within easy reach of the poor, and that even if they were, ignorant natives would be too

* Forrest's *Selections*, i. pp. 51–52.

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terrified to seek redress from them. Some device had to be found whereby justice could be guaranteed to such as these. Even a man of his ability and acumen must have been puzzled at the sight of the heterogeneous mass of population which then inhabited the town and island of Bombay. It numbered only ten thousand souls, but was drawn from many different communities, following various occupations and diverse creeds. How to govern them well and harmoniously was the problem which he set himself to solve early in his career as Governor of Bombay. Quick to discern good in everything, and never refusing to take advantage of it from whatever quarter it came, he found a key to the problem in the system of the Panchayat, which must have been in vogue in the country at the time, and his proposal was an improvement upon it. We must state it in full, for it is a corollary, as it were, of the system of judicial administration which was established by Gerald Aungier during his first visit to Bombay. In order to preserve the Government, he wrote,

"in a constant regular method free from that confusion which a body composed of so many nations will be subject to, it were requisite y^{t} ye severall nations at prest inhabiting or hereafter to inhabitt on the Island Bombay be reduced or modelled into so many orders or tribes, and that each nation may have a Chief or Consull of the same nation appointed over them by the Govr & Councell whose duty and office must be to represent ye grievances wch Moors or any of the s^{d} nation shall receive from the Christians or any other, as also to answere for what faults any of the said nation shall committ, y^{t} the offenders be brought to punish^{t} and that what dutys or fines are due to the Comp^{a} may be timely satisfied; his office may be also to arbitrate and determine all controversys wch may arise between said nation, in case the partys are so agreed, otherwise they are to be brought before the Courts of Judicature. . . . Now as to the choice of these Consulls, it seems necessary that they be chosen yearly or at most every third year; that at their election they take an oath of fidellity, in such tearms as the Hon'ble Comp^{a} shall please to impose on them, that such who meritt well from the Hon'ble Comp^{a} by good service, advancing of trade, inhabitants or shipping or bring any considerable proffitts and emoluments to the Island, be rewarded by some particular honours and speciments of the Hon'ble Comp^{a} favour towards y^{m} that others also may be invited to deserve in the same nature." *

Such a proposal could have emanated only from the resource-

* Forrest's *Selections*, i. p. 54.

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ful mind of a Gerald Aungier. By one masterly stroke of the pen—almost a flash of genius—he made each order or tribe responsible for the good behaviour of the members constituting it. He was, in fact, rearing, though perhaps unconsciously, the fabric of self-government. Anyhow, he seems to have solved this problem in a manner which reflects the greatest credit on his sagacity and resourcefulness. Remarkably keen must have been Aungier's power of observation. One sweep of his eagle eye measured the situation with all its intricacies of detail. Nothing escaped his notice. Though French blood coursed in his veins, he was loyal to the soil on which he is said to have been born and bred. He was the servant of an English company, and the East India Company never had a servant more faithful and devoted than he. Always on the alert to strengthen English interests, he never missed an opportunity of adding to the prestige and popularity of England in the East Indies. But to return to our point. On the establishment of the Courts of Judicature in Bombay he found that the records were kept in the Portuguese language, as it was difficult to get clerks who could write them in English. This was not as it should be, he thought, so he made the following proposal :

" Whereas hitherto for want of sufficient number of Englishmen able quallified thereunto, wee have been forced to serve ourselves of the native Portugese for Justices, Constables and other publick offices, especially in the lower Courts of Judicature, who not understanding English language, the proceedings of your said Courts, as also of upper Courts, have been hitherto on necessity don in the Portugese language, wch is not only dishonb^le^ in its selfe, but also exposes the Governmn^t^ and proceedings of s^d^ Courts to many inconveniencys, wherefore for ye preventing thereof it is indispensibly necessary that all proceedings in said Courts of Judicature be don altogether in ye English language, for ye better managem^t^ whereof, y^t^ the Comp^a^ would be pleased to send out yearly a convenient number of p.sons well quallified for said offices whose charges and sallarys must be paid out of the ffees, fines and amerciaments wch shall arise from the s^d^ Courts, wch will be a good livelihood for y^m^ so that they not be any charge to ye Comp^a^, having freedom to trade to improve their stockes to y^r^ most advantage. This will be a means to strengthen the English interests on the Island, wch at pres^t^ is low and weake and consequently not so much esteemed by the natives as it ought to be." *

* Forrest's *Selections*, i. p. 55.

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Aungier respected laws and ordinances, not in their breach, but in the strict observance of them. There was no one more zealous than he for the fair fame of justice and the majesty of law. He was the first to unveil the Face of Justice in Bombay, and never tired of admiring its beauty. It was with the view of rigidly enforcing all the rules and regulations that had been framed for the good government of the island that he made the last proposal in that important letter.

"For ye more strict observation," he wrote, "of all laws and ordinances already made, or hereafter to be made by the Honn'ble Comp^a^ for the Island Bombay, and for the more regular and exact paym^t^, keeping an acco^t^ of all fines, forfeitures and amerciaments due to the Honn'ble Comp^a^ on any acco^t^ whatsoever, that a certaine person be appointed of honest reputation having the power and office of a Recorder, whose duty must be to take care that all penall laws are put in execution and all forfeitures, fines and amerciaments rec^d^ from all without respect of p.sons and to keep an exact register thereof to be sent ye Comp^a^ every yeare, the s^d^ Recorder also may have the office of an Escheater to Escheat, condemne and seize to the Comp^a^ use all lands, houses and tenemt^s^ wch in time either by the failing of ye lives of the present incumbents or possessors or otherwise, shall accrew by right in law to the Honn'ble Comp^a^." *

Aungier believed in the wholesome effect of sumptuary laws. He hated all show and vanity, and was a staunch Swadeshist. He therefore proposed:

"That for the encouraging good husbandry, by preventing the vaine and moderate [immoderate?] excess of apparrell, as also for ye greater consumption of our owne native manufactures, a standing law be established by ye Hon'ble Comp^a^ that no apparell or outward garments, to wit, Tunicks, Vest, Doublet, Breeches, be used or worn by any Christian inhabitants of ye said island, those of ye Eastern Church excepted, of what quallity, nation and condition soever, but such as are made of English manufactures or brought out of England in our owne shipping whether of silke, wooll or cotton."

He also ordered the soldiers to wear certain kinds of apparel only, and "for the better confirmation and continuance of this law, that certaine fines and penaltys be inflicted on any whomsoever, whether English or other, that shall attempt to make breach thereof." It must have shocked this good Christian to

* Forrest's *Selections*, i. p. 56.

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see the irregular lives led by many of his countrymen in Bombay. The population then consisted chiefly of vagabonds and fugitives, and drunkenness, gambling, and other vices were rampant. Aungier set himself to put these down, as far as possible, with a strong hand. It grieved him to see the sad straits to which several of his countrymen were reduced by marrying low-class Portuguese women and the consequent decay of the Protestant religion. This is how he proposed to remedy the evil:

"Whereas, for want of Eng^{s} women, many of the English and others protestant soldiers sent out, doe marry with Portugese mestise women, natives of ye land who are Roman Catholicks, by wch means the children of the s^{d} protestants are through their fathers' neglect brought up in the Roman Catholick principles to the great dishonour and weaking the Protestant religion and interest, wherefore for the preventing the evill consequences wch may in time accrue therefrom, that the Comp^{a} would please not only to encourage the sending out of English women, but also to establish a standing order y^{t} the children of all protestant fathers shall be brought up carefully in the protestant religion, though the mothers thereof be Roman Catholicks, and that severe penaltys be inflicted on all offenders, especially on the Padrees who shall endeavour to baptise the said children or any way attempt to inveigle or intice them away from the protestant faith." *

Unfortunately, some of these Englishwomen were not as modest and well-behaved as the President could have wished. Indeed, their mode of life created a scandal which at last came to the ears of the Governor. Hard as he was on the ill-behaved Portuguese women and the Padrees, whose licentiousness was notorious, he was no less stern in dealing with his own countrymen and women who transgressed the laws of society. And if there was a sting in the punishment he awarded, there was strict impartiality in the justice meted out. On this subject he wrote to the Bombay Council from Surat in 1675:

"And whereas you give us notice y^{t} some of ye women are growne scandalous to o^{r} nation, religion and Governm^{t} wee require you in the Hon'ble Compa^{s} name to give y^{m} all faire warning y^{t} they do apply y^{m}selves to a more sober and Christian conversation, otherwise ye sentence is y^{s} y^{t} they shall be confined totally of their liberty to goe

* Forrest's *Selections*, i. p. 55.

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abroad and fed with bread and water till they are embarqued on board ship for England."*

In some of the other minor proposals we seem to hear the voice of the political economist. For instance, he would have artizans only of the reformed religion, and would bind married men to live in Bombay for ten or seven years at least, on pain "of a considerable penalty on all who shall offend herein." The trader, English or native, was not forgotten in these proposals. Aungier was prepared to give him every reasonable facility, for he knew that commerce must play an important part in the development of the town and island of Bombay. Certain privileges and immunities were given to those who settled down on the island for purposes of trade, not the least important of which was the granting of loans. "That for the greater advance of trade," he proposed, "the Comp^a would please to give order for the lending out certaine sums of money to the said society and other honest merchants, they paying interest for the same."† And in support of his proposal he cited an instance to his masters, that "This course and pollicy was practised formerly by the Dukes of Florence with very remarkable success, to ye raising the trade and much enriching the Port of Leghorne and consequently to the great increase of his Customs and revenus." For the promotion of the same laudable object he suggested that the Company should attract artificers and handicraftsmen to settle with their families on the island, by allowing them a year's pay in advance; and amongst those he particularly asked for were carpenters, weavers in silk and cotton, gunsmiths and locksmiths, as well as "armores, bakers, cooks, shoemakers, talors, diers, barbers, button-makers, ribbond-weavers, butchers, haberdashers of a small ware," &c.

The foregoing proposals were made by Aungier while he was at Surat. He would have returned to Bombay long before this but for the obstinacy of the Mogul Governor in withholding his con-

* After quoting this passage, Anderson ejaculates: "O! Gerald Aungier! In all this affair you had much Protestant zeal, but little Christian love." (*The English in Western India*, p. 102).

† The system of granting loans inaugurated during the administration of Gerald Aungier was continued long afterwards, for we find instances of the grants of such loans in the records of the Mayor's Court.

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sent, and other unforeseen circumstances. He had heard evil reports from Bombay of disobedience to lawful authority bordering on sedition. It had grieved him to hear of

"ye unparrelled affront used to ye Hon'ble Comp^a authority & likewise ye seditious practice committed by these irregular speritts y^t like flies will never leave fluttering about ye candle till they have burnt their wings and leave a noisome stinck behinde y^m."

In April, 1672, Aungier determined to leave Surat, and asked for the consent of the Mogul Governor; but no amount of reasoning or pleading prevailed with him. Emboldened by the authority vested in him by the Emperor, the Governor even demanded a round sum of money as the price of permission to the President to go to Bombay. But this was too much for the patience of Aungier.

". . . Takeing into consideration," he wrote to the Company, "ye injustice of his demand & ye evill consequence would accrew to your affaires should wee consent thereunto, wee resolved [not ?] only not to give him any money; but also ye P^r should write him a lett^r (for he will not be visited by any of ye Chrristians) and in ye s^d lett^r give him leave to understand y^t in regard he was a serv^t and under obedience to ord^r he must obey, y^t he is a free merch^t and no slave or prison^r."

But even these words fell on deaf ears. Though a free merchant and no slave or prisoner, Aungier must have felt the irksomeness of his position. He had to resign himself to the inevitable, and wound up the above letter thus:

"We know not yet w^t ye issue of this business will be; but we trust in God no evil but much good will accrue to y^r settlem^t, both here and at Bombay, in ye conclusion: but it will be effect of time, patience, resolution, and a provident care to provide for unexpected accidents, in all wch wee begg God's gratious assistance to direct and prosper us in all ye difficultys wch wee shall encounter in your affaires." *

Unable to tolerate the opposition of the Mogul Governor any longer, Aungier seems to have left Swally Marine towards the middle of May, 1672. The monsoon was about to burst, and few ships ventured out in the open sea. The factors must have

* Forrest's *Selections*, i. p. 60.

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implored their Chief not to embark at such an unseasonable hour. They all loved him and respected him, as they did no other President before. But the intrepid Chief was deaf to their entreaties and blind even to the fury of Nature. Affairs in Bombay had gone from bad to worse, and his presence was urgently required there. So much so that, as the factors wrote, "no consideration could divert him from running the greatest hazards to serve his honourable masters." High winds and wild waves could not hold him back. For a fortnight and more the factors had no news of his arrival. Great anxiety prevailed at the factory, deepened by terrible stories of shipwrecks in the Surat seas.

"Wee then," they wrote on the 21st of June, "began to despaire of y^r^ safety; but it pleased God to comfort us. Ye next day being Sunday, as wee satt at dinner, we re^cd^ his Honr^e^ lett^r^ to o^r^ infinite content^mt^ wth ye comfortable news of his safe arrival on ye island ye 7th cur^rt^. After such eminent and great dangers as he encountered, for wch wee rend^r^ thanks to Almighty God, and as in such cases wee ought to signifie also to ye world o^r^ gladness, the next day the whole family remembered so great a blessing at Mirza Mosums Garden." *

We have no doubt much good wine was drunk on the occasion, for the "family" must have celebrated the safe arrival of the President in right royal fashion. The factors had a very high opinion of their President, to which they testified in a letter they wrote to the Company, *via* Persia and Aleppo, as follows:

"They (ye Presid^t^ & his Councell in Bombay) have discoursed to you in brief ye state of y^r^ Island; wch we assure you in y^t^ short time wch y^r^ P^r^ hath resided there is very much improved, Courts of Judicature, and many other importent affaires settled, and ye Almighty blessing his endeavours, wch are wholly bent to make y^t^ yor Collony happy and flourishing; we shall find w^t^ further time he shall spend there will be very advantageous to y^r^ Interest in ye farr great^r^ improvem^t^ of ye place." †

And again, in a letter to the Bantam factory, dated January 31, 1673, they wrote:

"Since the latter end of May last our President hath been in his government of Bombay. He had returned to us in September last had

* Forrest's *Selections*, i. p. 67. † *Ibid* i. 69.

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not the war broke out. But his presence by animating the people being so absolutely necessary and the great good he hath done by establishing the English laws and Courts of Judicature, and still doth in strengthening the island, is of such force that he prefers his honours in maintaining the place before any other interest." *

The factors were not mistaken in their estimate of the work and worth of their Chief, for, as we shall presently see, the three subsequent years that Gerald Aungier spent on the island of Bombay were most advantageous to its affairs and most beneficial to its inhabitants.

During this second visit the problem that demanded much care and forethought was not concerned with the freedom of trade or encouragement of native industries, but related to the rights of the Company, on the one hand, and of the Portuguese estate-holders, on the other, in the lands situated in the town and island of Bombay. We have already touched upon the disputes that had arisen between the English and the Portuguese since the grant of the Charter of 1668. The tenure of land was in a state of utter confusion. Nobody seemed to know for certain whether a particular plot of land belonged to the Company or a private individual, and, in the case of the latter, whether he held it under a good title. The blame for this attaches largely to Humphrey Cooke. His unjust capitulation made matters worse, and his own corruption added not a little to the difficulties of the situation.

"A sheaf of fictitious title-deeds," says Douglas, "and forged documents, the manufacture of which was connived at by Cooke himself and for which he had taken bribes, were made to do duty with wonderful alacrity in the interests of this new proprietary who were now so anxious to foist their claims on the English."

The result was that the Portuguese claimed possession of lands over which they had no more right than the man in the moon, and the English, on their part, deprived most of them even of their just rights on the pretext that they did not show good title. The Court of Directors had sent orders that restoration should be made to all who could, on examination of their titles, establish their right to the property they claimed.

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i.

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This examination was beset with considerable difficulty, for who was to decide whether a title-deed was genuine or fictitious? Those were days when solicitors were conspicuous by their absence in Bombay, and the handwriting expert was an unknown person. Mr. Edwardes puts the situation in a nutshell.

"The Portuguese," he observes, "powerless to resist the inroads of the English, had done their utmost to minimise the value of the ceded territory by declaring that most of the lands of any value were the property of private individuals and could not, therefore, under the articles of delivery, be considered as the property of the Crown or Company. The earlier Governors, as we have seen, retaliated by seizing such properties on the most trivial pretexts, with the result that a feeling of irritation and unrest prevailed widely throughout the islands."*

The Deputy-Governor and Council felt that they were unable to save the situation. It required a man of exceptional tact and resourcefulness to find a way out of the difficulty. Such a man had already left Swally Marine and was now in Bombay.

Aungier appreciated the position at a glance. He heard both sides patiently and carefully, for he was not a man to rush through an affair of such far-reaching importance. It was probably brought to his notice that the people were desirous that their titles should be distinctly fixed by a regulation, rather than weakened by the scrutiny which the Court of Directors had suggested. Many of them were too poor to afford the expenses of this scrutiny. They were therefore willing to agree to a pecuniary compromise for the permanent security of their property. In the spontaneous expression of this desire Aungier found his opportunity. On October 1, 1672, there was held at the Castle a general assembly of the chief representatives of the inhabitants of Bombay, at which certain articles of agreement were submitted for the consideration of the Governor in Council. Exactly a month later, another general assembly, "whereunto all the people in general interested in this affair were invited to appear" was convened, and the famous Convention or "composition between the Honble. East India Company and Inhabitants of this Isle of Bombay & Mayim, subjects of the said Company, and others, that having lands of inheritance on this isle are living in other places," was

* *Rise of Bombay*, p. 109.

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agreed to.* At this meeting there were present Governor Aungier and his five members of Council, amongst whom stands out prominent the name of Mr. James Adams, "Attorney-General for the Honble. Company"; whilst the inhabitants of Bombay were represented by several Portuguese and English landlords who commanded some influence at the time. This Convention consists of several articles which will be noticed in detail in a subsequent chapter. We shall content ourselves by referring here to two or three of the most important provisions, testifying to the wisdom, tact, and judgment of the man who brought about this amicable settlement of a dispute which had become serious of late, and might have caused the Company much trouble had it not been put an end to at the time. These clauses may be summarised as follows:

"That for the better way of agreeing in the express charges that the Company have for the defence of this isle, the inhabitants and others aforesaid do offer to the Honourable Company 20,000 xeraphins (Rs.13,850) yearly, including in this sum the quit-rents that they did pay formerly. That the estates that are seized on shall be delivered again to the old possessors of what conditions soever. That for the time to come if any estates on the isle come to the Honourable Company by any title whatsoever, or likewise by cutting any tree or seizing any parts or batty-grounds for the use of building the city or other ground for the defence of it or any other fortification, that the quantity that amounts to the said estate with the quit-rents shall be deducted according to the value of the palmieras or the ground."

There is one more clause, perhaps the most important, which deserves notice here. The town and island of Bombay at the time consisted of Mazagaon, Sivri, Parel, and Varli, these having come into the possession of the English by the Marriage Treaty,

* It is a curious circumstance that neither Bruce nor Fryer refers to this epoch-making event in General Aungier's administration of Bombay, although they are both almost prolix in describing other important events of the period. It is not easy to account for their silence. The credit of unearthing the Convention in 1814 is due to Mr. F. Warden, the then Chief Secretary to Government, who refers to it in his admirable *Report on Landed Tenures in Bombay*. "At this early period therefore," he writes, "were the inhabitants secured in their possessions; all who now hold property subject to the payment of what is called pension (*pensao*) possess it by a tenure of which the Government cannot deprive them unless the land is required for building 'cities, towns, or fortifications,' when reasonable satisfaction is to be made to the proprietors."

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and also Mahim, Sion, Dharavi, and Vadala, which were smuggled in by the astute Humphrey Cooke. But Colaba was still beyond the Company's jurisdiction. Aungier assessed the value of this little island at its proper worth and made up his mind to tack it on to the town and island of Bombay. Hence we find the clause in the Convention—

"that in regard to the little isle Colio (Colaba), reaching from the outer point westwardly of the isle of the Paccari (Pakhadis) or parish called Polo (Palav = Apollo) will be of great use to the Honourable Company, in the good design which they have for the security and defence of this whole isle, it is hereby agreed that it shall be totally and wholly reserved for the use of the said Company, they making such reasonable satisfaction to the persons interested therein as hereafter is expressed."

A spirit of compromise runs through every article of this Convention. If Aungier gave way in certain matters, he also held out for the Company in others. Before signifying their assent to these clauses "out of their earnest and unfeigned desire to promote the public good, peace, and tranquillity of the isle," the Governor and Council stipulated for certain conditions. The principal of these were:

"That all royalties, rights, privileges, and immunities which did formerly belong to the Crown of Portugal of Foras and Royal Rents of what nature or condition so ever shall be reserved as of right they belong to the Honourable Company; that there shall be reserved for the Honourable Com^any all grounds on the water side within the compass of the isle to be disposed of in necessary occasions for the public, excepting such grounds wherein there are at present planted gardens of cocoanut trees or rice-grounds, as also churches, houses or ware-houses of stone; and that whensoever for the public good it shall be necessary to make use of any of the said places or properties the Government and Council shall make satisfaction to the interest in a reasonable manner."

The last article declared that the Governor and Council established and ratified the agreement as perpetual and irrevocable between the Company and the people, and contained a promise by the Governor in Council to prevail upon the Company "to establish and confirm the same by a patent made under their hands and seals." But it does not seem to have been formally ratified by the Court of Directors, though it was never

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repudiated. Regarding this point, Sir Michael Westropp observes in his judgment:

"In the answer of the Company to the memorial of the Portuguese Envoy, relative to the services of the Portuguese inhabitants of the island of Bombay, dated 18th March, 1691-92, it appears to have been referred to as a valid and subsisting arrangement. There is not any doubt that it has been acted upon by the Government of Bombay and the inhabitants."*

The fact that the annual payment of 20,000 xeraphins, which was the foras or quit-rent fixed by this agreement, continues under the name of *pension* is abundant proof of the validity of Governor Aungier's famous Convention. About two years after it was signed by the Governor of Bombay and his Council on behalf of the Company, and by "one hundred and twenty of the eminents of the *Povo* ("people") on behalf of the whole Povo of the Isle," some discontented persons† attempted to make out that the Convention was unjust. Thereupon the intrepid Governor called another meeting on July 16, 1674, and desired them

"to declare their minds freely, without the least apprehension of fear, concerning their sense of the said contract and whether they owned their exclamations against it, declaring further that they were at their own liberty whether it should be disannulled or made void or be confirmed. Whereupon the Povo in general said they never exclaimed against the said contract but were thoroughly satisfied therewith, and of the justice thereof, it being an affair of their own request and seeking after, and desired that the Governor in Council would be pleased to ratify and confirm the said contract unto them, which was unanimously on both sides agreed on."‡

It is difficult to think of a more spontaneous agreement than this. It stands to-day as a monument perpetuating Aungier's

* 4, Bombay High Court Reports, p. 46.

† Curiously enough, it was some of Aungier's own countrymen who made this unworthy attempt. They probably wanted to be exempted from the conditions imposed by the Convention. But to Aungier the colour of the skin made no difference. The same law, he thought, should govern the English and the native. He was inexorable, and would on no account yield.

‡ 4, Bombay High Court Reports, p. 45.

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memory better than any mausoleum that could have been erected over his resting-place at Surat. It has been asked if Aungier could not have secured for his masters better terms under the Convention: if, for instance, he could not have raised the price at which the Povo of Bombay purchased their security in property. As regards the latter point, it will suffice to remark that the lands in Bombay at the time were not considered worth purchasing, as they were mostly submerged in water and unfit for cultivation. It is true that on the very lands which were bartered away by Aungier at the yearly quit-rent of only £1,200 stand to-day majestic piles of buildings worth several crores of rupees. But it must be remembered that more than two hundred and fifty years have elapsed since the date of the Convention. After mature consideration, Douglas has come to the conclusion that, "instead of being a bad bargain for us, the Convention of Aungier was a great, a wise, and a statesmanlike measure; that it is not only the basis upon which the lands affected by it rest, but that upon it rests a goodly part of the wealth, population, and commercial greatness of our city." Aungier might have refused to enter into any sort of Convention with the Povo of the island, or he could have imposed terms upon them more advantageous to his masters. He might also have made a clean sweep of the landlords on the ground of bad title or forged title-deeds. He might have adopted various other devices to defeat the just claims of the people, but, let it be said to his lasting credit, he did ample justice to them. "No contemplation of human passion or ambition," to quote the words of the historian above referred to, "could seduce Aungier from his allegiance to the one path of duty on which he had entered, and no accusation can be brought against the English for using their authority unjustly."*

Aungier's watchwords were "Toleration and Progress." We have already seen what efforts he made for the progress of Bombay. The greatest liberty was to be allowed to native traders. Their beliefs, even their superstitions, were to be respected. He recognised the equality of all religions in the eye of the law. No man did more for the growth of religious toleration in Bombay than he. For instance, when the Mahajan of Surat asked for certain privileges in 1671, he persuaded his masters to accede to their request. And when, in 1677, one

* *Bombay and Western India*, i. p. 92.

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Neema Parrack, a Banya from Div, petitioned to the Governor for permission to settle down in Bombay on certain conditions, he met the petitioner more than half-way. In fact, he entered into a sort of compact with the Banyas in general whereby the latter secured not only for themselves, but for their descendants and successors for all time to come, the boon of religious liberty as their inalienable birthright. So important a compact deserves fuller notice. Neema Parrack, an eminent merchant of Div, had expressed a desire to settle with his family in Bombay for purposes of trade, provided a patent was granted to him under the Company's seal "containing certaine favours wch he begs in relation to liberty and security in ye exercise of religion, trade, property and reputable residence on s^{d} Island." In recognition of his eminent worth and high reputation, Governor Aungier and his Council were pleased to grant him certain privileges, the chief of which may be noted below:

"(2) That he wth ye Brahminees or Ver of his cast shall enjoy ye free exercise of their religion w^{t}h^{in} their owne houses w^{t}hout ye molestation of any person w^{t}soever, that noe Eng^{s}man, Portuguez, or other Christian, nor Mahomitan, shall be permitted to live wth in their compound, or offer to kill any living creature there, or doe ye least injury or indignity to y^{m}, and if any shall presume to offend y^{m} wth in ye limits of their said compound upon their complaint to the Govr or Dep^{ty} Govr ye offenders shall be exemplary punished; y^{t} they shall have liberty to burn their dead, according to their custome and also to use their ceremonies at their weddings, and y^{t} none of their profession of w^{t} age, sex or condition w^{t}ever they be, shall be forced to turne Christians, nor to carry burthens against their wills.

"(4) That in case there falls out any difference or suite in law between him or his Vakeell or attorneys or ye Banians of his cast, and any other persons remaining on the Island, ye Govr or Dept^{y} Govr shall not suffer him or y^{m} to be publiquely arrested, dishonoured or carryed to prison without first giving him due notice of ye cause depending, y^{t} he or they may cause justice to be done in an honest and amicable way, and in case any difference happen between him or his attorney, or any Banian of his owne cast, they may have liberty to decide it among themselves w^{t}hout being forced to go to law.

"(7) That in case any person be indebted to him and also to other Banians, and be not able to pay all his debts, his right may be preferred before other Banians.

"(9) That he or any of his ffamily shall have liberty of egress and ingres to and fro ye ffort or residence of ye Governor and Dept^{y} Govr, y^{t} they shall be received wth civil respect and be permitted to sit downe

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according to their qualities; y^t they shall freely use coaches, horses or pallanqueens and quitasals for their conveniency w^thout any disturbance; y^t their servants may weare swords and daggers, shall not be abused, beaten, or imprisoned except they offend ag^st ye law, and y^t in any case of his kindred or friends shall come to visit him or them from any other parts, they shall be used with civility and respect."*

It may be noted here that the Bombay Council apparently forwarded their opinion on this patent of privileges to the Court of Directors on April 3, 1677, in the course of which they say:

"The 4th Article is indeed a privilege, but no more y^n Girder, the Moody, and some others have, wch does not in ye least exempt y^m from the hands of ye law or justice, but does only ask that justice be done respectfully, wch he need not doubt of, and for matter of differences among y^mselves there is already His Hon^rs Patent authorizing y^m to decide such things.

"As to the 7th, our law is such y^t if a person be indebted to severall men, whosoever gets a judgment first in Court will be paid his full debt, but no man can be agrieved at y^t, nor can any creditour have any pretence to w^t is once paid, and w^n judgm^t is given it is already paid in law, so y^t he is no longer proprietour of it; but w^n a person is indebted to two men and ye first sues him, and upon y^t ye second comes in and sues him to, wth w^t justice can wee pay all ye Debt^rs estate to ye second creditour. Only of this he may be assured y^t all justice shall be done him wth speed according to o^r law and the party forced to pay ye full debt if able, and ly in prison for ye rest till hee pleases to release him, wch wee suppose may well content him."

The liberality and toleration of Gerald Aungier are nowhere seen to greater advantage than in the privileges secured by the fortunate Neema Parrack. Another Governor less large-minded than he might have rejected the Banya's petition on the ground that the latter wanted too much, thereby showing his own weakness. The greatness of Aungier lay in the strength of his character.

So far we have pictured Gerald Aungier as a man of peace, the man who loved peace and preached and practised it wherever he went. But he was a man of action too. There is no evidence to show that, like Sir George Oxenden, he came of a fighting stock. But there are instances to prove that he could

* Forrest's *Selections*, i. p. 112.

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fight, and was always prepared to do so. Almost the first work he took in hand during his visit to Bombay in 1672 was to strengthen the fortifications of the castle. And he did this not a day too soon. For, immediately after, a Dutch fleet arrived in Bombay and threatened to attack the island. The Dutch had six thousand men on board, whereas Aungier had barely a thousand who could fight. But, undaunted, he gathered all the available forces around him, and placed them so skilfully, particularly the Bhandaris armed with clubs, that the enemy took fright and sailed away. On that occasion, says Orme, Aungier exerted himself "with the calmness of a philosopher and the courage of a centurion." No higher testimony is needed to the bravery of this man of peace. The 'grand rebel" of the Dekkan was also very troublesome,* but Aungier always kept him at bay, and Sivaji soon discovered that neither strategy nor stratagem was of much avail. It was during Aungier's administration that an embassy was sent to Sivaji, or, as he was sometimes styled by the early writers, Raja Seva Gi, with the object of entering into a commercial treaty with him. The astute Governor believed in taking time by the forelock, for finding that their gallant behaviour in repulsing an attack which Sivaji had made upon Surat had created a favourable impression upon him, Aungier lost no time in preparing the embassy, with the object of securing certain privileges for the East India Company. An anonymous historian thus sums up the result of the embassy:

"Except making the English coin current in his dominions, and restoring wrecks of ships perished on his coasts, the whole that was demanded was granted, with this compliment, that with great satisfaction he embraced our friendship, promising to himself and his country much happiness by our settlement and trade." †

There were, however, more formidable enemies than the Mahrathas. The Dutch, the French, and the Portuguese each attempted to oust the English from their supremacy in Bombay and at Surat. But Aungier, the Commander-in-Chief of His

* On October 3, 1670, Sivaji's soldiers invaded and pillaged Surat, carrying away immense treasure, but Aungier secured the lives of the English and the property of the Company.

† *An Historical Account of Bombay*, 1781, p. 25.

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Majesty's Forces in the East Indies, proved more than a match for them all. He had a very mean opinion of the Portuguese, and considered them hardly worth fighting. On hearing of "the ridiculous pride and vanity of ye Portuges in threatening and mustering forces for warr," he wrote to the Bombay Council as follows:

"And therefore wee require you boldly and manfully to oppose al such proud, vaineglorious, and malitious attempts wch the Portugese may designe against you, returne words with words, designe with designe, violence with violence, embargo with embargo, and let them and all y^or neighbours know publickly that wee value not their ffriendship nor feare their enmity; and in regard wee understand that some Padrees were more busy than became them in this affaire in casting out evill slanderous reports to the encouragement of the inhabitants, wee require you to give us a strict acc^t what Padrees they were, and what they did, and particularly of that Jesuite Padree at Parell, and the Padrees at Mahim, that we may give such directions as are necessary therein for the preventing the mischiefs they may doe us." *

The Siddy had also brought out his fleet, but he proved practically harmless during Aungier's governorship of Bombay. Although he was refused quarters on shore, the President wrote to the Bombay Council to be civil to him.

"Wee would have you be," he urged, "very civill in your discourses & arguments to the Siddy and all the officers, representing the unreasonableness of their requests, the trouble wch wee have already sustained & the evill consequences that may follow, and faile not to supply them with what they may want, wood, water and provisions, and let them have noe just complaint against you in that manner, but suffer none of their vessells to hale on shore by any meanes if you can prevent it."

Such conciliation and tact probably contributed towards his success as much as the calmness and courage which he invariably showed in dealing with his enemies.

Aungier's life was meanwhile ebbing away. He was growing old and weak. The climate of Bombay, which had the unenviable reputation of being considered a charnel-house for Europeans, had probably told on his health. About the end of 1675 he must have returned to Surat, for we find him spending the

* Forrest's *Selections*, i. p. 85.

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Christmas of that year in that historic city. Before he left Bombay, however, he is said to have drawn up a long and elaborate report upon the condition and prospects of Bombay for the information of the Court.

"This information," Da Cunha writes, "written during the season of 1673–74, was in fact a statistical account of the island, specifying the division of it into the districts of Bombay and Mahim, with an account of its inhabitants, the extent and magnitude of its fortifications, and the strength of the garrison." *

Aungier lived for only two years after his departure from Bombay, but, though he was far from well and felt the burden of his age, he was as active as ever. He once expressed a wish to retire, but death would not allow him the gratification of his wish. He died in harness, with the sword by his side and the quill in hand. Wasted with dysentery and occasionally bled by the doctors, as was the barbarous fashion in those days, he had lost the use of his limbs. But his mind had not lost its elasticity nor his heart its goodness. Almost till the last he was anxious about affairs in Bombay. It was his favourite city, for had he not built it, as he intended, by God's assistance? Propped up in bed and with the shadow of death hovering about him, he wrote to the Bombay Council "to build a street of houses on Bombay, reaching from Judge Nicholls house to ye water-side." But he did not wish to mulct the Company in cost if they did not approve of the suggestion. The spirit of independence was as strong within him as of yore.

"If you judge," he had it added, "in any wayes inconvenient to ye Company to buy the said ground for their acc^{tt}, then he desires you y^{t} you would buy the said ground for his own acc^{tt}, causing ye writing to be firmely established by the law, y^{t} he may have a sufficient title thereunto, desiring y^{or} answer by the next cossett."

He was grieved to hear about the misconduct of the Judge of the island, to which we shall have occasion to refer hereafter. Owing to the increase of sickness and mortality in Bombay the

* *Origin of Bombay*, p. 290. In this respect Dr. Gerson da Cunha compares Gerald Aungier to the well-known Portuguese civilian, Simao Botehlo, the Overseer of the Revenues of Bassein, who in 1554 wrote the *Tombo do Estado da India* and several letters to the King of Portugal.

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Deputy-Governor had suggested that the Court House should be temporarily turned into a hospital, as there was no such institution then on the island. The Governor approved of the suggestion and also of the proposal to use Mr. Petit's house as the Court of Judicature, but he counselled economy and asked for its valuation. He considered Rs.2,400 "to be a deare penny worth," and recommended that the house should be occupied without the garden and ground adjoining it. He was ill satisfied with the adjustment of accounts in Bombay and enjoined greater care in this respect. His love of the Padrees grew less every day. He had heard of the Padrees from Goa leaving their cloisters on purpose to lead licentious lives in Bombay and to incite the people to disorder and disaffection. This sorely tried him, and he wrote to the Bombay Council "that if such Padrees are upon the island, you give them convenient notice to repaire to Chaule or where else they please to disguise themselves, for yt wee are not well satisfied with their contynuance there." * But if his heart was adamant against malpractices, social or religious, the milk of human kindness flowed from it freely on occasions deserving of pity or help. Certain widows—to wit, Mrs. Shaxton and Mrs. Wilcox—were the recipients of his bounty. In Aungier was united the courage of a man with the tenderness of a woman. His last great act was, as we have seen, the Magna Charta of religious toleration which he granted to the Banyas through their eminent representative, Neema Parrack, in 1677. Only a month after this compact was signed Gerald Aungier died. A writer in the *Monthly Miscellany* states that he breathed his last within the precincts of this city, but that seems to be a mistake. For in the letter dated June 30, 1677, the Surat Council wrote to Bombay:

"It hath pleased God to our great sorrow after a tedious sickness to take out of this life o^r worthy Presid^t, Gerald Aungier, who dec^d this morning between four & five of ye clock, of wch wee thought good to give you this timely notice, y^t you might prevent all innovations or disturbances upon ye Island."

The news of this sad event spread like wildfire, and deep and widespread must have been the grief occasioned by it. The

* Forrest's *Selections*, i. p. 107.

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early historians of Bombay are not agreed as to the place where this great man was buried. But it seems clear that Aungier was laid to his final rest at Surat, for the factors, in concluding the above letter, say: "Our thoughts are now taken up in giving orders and directions for ye descent burial of ye defunct, whom, God willing, wee intend to interr on Munday next, in such manner ye time and place will admit." * Aungier must have been buried in grand style, with the flags over the Castle and the factory half-mast high. But it may be truly observed that "no man knoweth of his sepulchre unto this day." Statues have been erected over the tombs of lesser men—but Aungier lies under a simple grave untouched by the art of the sculptor. The former had statues erected to them after death and by other hands; Aungier erected his own monument during life. The *Panchayat*, the Convention with the Povo of Bombay, the compact with Neema Parrack—each of these and many more similar acts enshrine his memory as no stone or marble could. It is perhaps in the fitness of things that such a man should lie in a nameless grave.† But if Surat possesses not a single relic of one of her most famous Presidents, Bombay can boast of a possession reminding her that there lived a good and great Christian more than two centuries and a half ago, who strove hard for the honour of his religion without in any way attempting to bring dishonour on other religions. There is a silver chalice,‡ religiously preserved at the Bombay Cathedral, which Aungier presented to the Christian community of Bombay in 1675, when there was no trace of a cathedral on the island. This precious

* Forrest's *Selections*, i. p. 116.

† According to Campbell there is a tomb in Surat, without an inscription, which is supposed to be that of Aungier.

‡ The chalice bears the following compact inscription:

"Hunc calicem
Eucharistæ sacrum esse
voluit
Honorabilis Geraldus
Aungierus, Insulæ Bombaiæ
Gubernator, ac pro rebus Honorabilis
Anglorum Societatis Indicis
Orientalibus mercatorum agentium Præses,
illustrii
æræ Christianæ
anno 1675."

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possession serves not only to perpetuate the memory of the greatest of our early Governors, but may also be reckoned as "the oldest tangible memorial of the existence of an English settlement in Bombay." The Bombay Council could not adequately express their sense of sorrow at the death of their esteemed chief.

"Wee cannot rightly express," they wrote on July 11, 1677, "ye reallity of our grief wee conceived at ye perusall of ye deplorable news of the death of our late noble President. Multiplicity of words may multiply ye sence of our loss, but cannot depaint its greatness and ye knowledge wee have of ye true worth and integrity of his successour, and it shall be our continuall prayers for a blessing on your great affairs."*

His masters in England could not have felt his loss less keenly, though there is nothing on record to show how they expressed their sense of sorrow. The King had not offered him a title, nor the Company any special reward. But it is a significant fact that the authorities at home, on hearing of his death, reduced the salary of his office in the case of his successors from £500 to £300. Douglas justly observes that Providence, as a rule, does not raise up men like Aungier twice in a generation. But Bombay had to wait much longer than a generation before she knew another Governor with the wisdom, tact, and courage of Gerald Aungier.

* Forrest's *Selections*, i. p. 133.

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CHAPTER V

THE ADMINISTRATION OF JUSTICE IN THE TOWN AND ISLAND OF BOMBAY

(1670–1726)

IN tracing the history of the administration of justice in the town and island of Bombay from the beginning, we must go back to the time when Aungier was its Governor. For it was he who passed certain orders at a Consultation held on February 2, 1670—a date which must be considered ever memorable in the history of the Bombay High Court—to regulate the administration of justice in it.

"The Governor in Council," so runs the Consultation, "in pursuance of the Honourable Company's order concerning a Court of Judicature for deciding of differences between party & party, as also concerning justices of the peace & constables for the cause & ends therein specified, has seriously considered the present state of affairs within this island, together with the number and qualifications of Englishmen thereon, who being able for such a trust can be spared for other necessary service. Likewise the convenience in this juncture of time and promulgation of new laws of suiting the present Government to the natives by a concurrence with Englishmen in matters of smaller importance to the end that justice may be duly administered, that the inhabitants may have the greater satisfaction in the execution of the laws, and that all things may proceed the more regular. After mature deliberation and debate, they resolve and conclude as follows: The island of Bombay to be divided into two distinct precincts, one comprehending Bombay, Mazagon, and Girgaon; and the other Mahim, Parel, Sion, and Worli, and the Puckreys (Pakhadis or hamlets) thereunto belonging. In each of these precincts there shall be five justices who besides the particulars expressed in the laws shall have power to receive, hear, try and determine all bills, plaints, petitions, and actions for sums of money not exceeding the value of five xeraphines (Rs.8¼). To this end

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those of the first precincts shall convene in the Custom House of Bombay [near the present Town Barracks] every Friday at eight o'clock in the morning, and those of the second precincts in the Custom House of Mahim on every Wednesday at the same hour. Provided always that the respective customers [Custom officers] of Bombay and Mahim being Englishmen be always present and preside as chairman in these respective Courts and three to make a quorum."*

It will be seen from the above that for the purposes of administration of justice the town and island of Bombay was divided into two parts or precincts, and that in each of these five justices, *all Englishmen*,† being qualified for the purpose, were appointed to administer justice, three forming a quorum. They were all unpaid officials, for it had first been ascertained that they could spare time for the discharge of their *honorary* duties. It was not till 1675 that a special salaried official was appointed to preside over the Courts of Judicature, and was given the title of Judge. The "customers" were, however, given certain privileges of trade, probably to compensate them for the loss of their time and in recognition of their trouble in discharging their onerous duties. There are, unfortunately, no records to show the nature of the justice meted out by them. These "customers" were chiefly traders, sublimely ignorant even of the rudimentary principles of law. Nor were there presumably any barristers or solicitors to plead the cause of litigants then, for there was not much litigation in Bombay. But to return to the deliberations of the Council. Aungier made the most use of the materials at hand. Hence we find the following provision:

"Further, that the said Court shall choose their own Perbes (Prabhu clerks) and other officers necessary: and appoint them such moderate fees as shall not be burdensome; and shall keep an exact register of all their sentences, resolutions, executions, and judgments whatsoever; and deliver authentic copy thereof quarterly to the Deputy Govr & Council. Moreover, that in every parish within either of these precincts above mentioned there shall be one constable who for an ensign of his office

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii.

† Natives were not then appointed justices, probably because they were not considered fit for such a trust. But on the establishment of the Mayor's Court in 1726 we hear of what were termed "black justices," so called in order, perhaps, to distinguish them from "white justices." (*Vide* footnote at p. 159.)

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shall carry a staff tipped with silver * and the Company's arms thereupon engraved, and shall attend those Courts as necessity requires."

Aungier was wise enough to see that the experiment of entrusting the administration of justice to a few traders, ignorant of law and devoid of any legal training, was fraught with considerable danger. He therefore decided to have a Court of Appeal.

"And lastly," concludes the above Consultation, "in regard there is no other Court of Judicature for decision of other cause and difference between party and party through want of men able and understanding in the laws, the Deputy-Governor and Council shall convene in Court every Tuesday from 8 to 11 in the forenoon and from 1 to 3 in the afternoon within the fort then and there to receive, try and decide all appeals (if any shall be made) from inferior Courts, as also all actions treasonable, felonious, capital or criminal, which in any way relate to the public Government and civil polity of the island and the Company's interest and estate thereupon, as well as all suits and actions whatsoever between man and man for lands, goods, and sums of money above the value of 200 xeraphins.† In this Court as provided in the laws, all trials shall be by a jury, and exact registers of their proceedings shall be kept that the equity thereof may appear to all whom it may concern." ‡

The Deputy-Governor and Council constituting themselves a Court of Appeal, "through want of men able and understanding in the laws," was an act of presumption delightful to a degree. It might lead one to suppose that the members of the superior Court were learned in the law: but we regret to say this was far from the case. The Court of Appeal was probably formed as a sort of check on the vagaries and illegalities of the "customers." In point of legal training there was, we suppose, little to choose between the superior and the inferior Courts. The superior Court was evidently entrusted with the administration of criminal justice. Consequently, it must have been well occupied with the trial of offenders, for the town and island of Bombay was

* The office of tip-staff to the Judges was abolished but recently.

† There is one point which seems to us inexplicable here. The inferior Courts were empowered to try suits, &c., *not exceeding* in value 5 xeraphins. The superior Courts took cognisance of all suits, &c., *above* the value of 200 xeraphins. *Query:* Which Courts were to try suits, &c., the value of which was between 5 xeraphins and 200 xeraphins? (See footnote at p. 159.)

‡ Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 2.

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then infested by thieves, vagabonds, and other disreputable characters. Those were times when neither mercy nor refinement was shown in the sentences awarded to the culprits. They were tried summarily and punished with a severity that fills one with horror to-day.

In this wise was the first Court of Judicature inaugurated in Bombay in 1670. One would think, were it not for the experience of Penang a century or two later, that it must have administered justice in accordance with the laws of England; though, indeed, a special Code was published in that year for its guidance. Unfortunately, no trace of this Code seems to be extant. We should not have known even of its publication but for the following entry in the Consultation Book:

"It is unanimously resolved that those laws which concern the administration of justice and common right, the form of judicature, and the penalties appointed against profaneness, breaches of morality and civil government shall be translated into the Portuguese and Kanarese languages and be published with all convenient speed, and the others deferred till further consideration."

Two years after, an attempt was made to frame a sort of Procedure Code. For in a letter from Surat, the Governor and Council write to Bombay:

"Mr. Geo. Wilcox hath informed y^{t} he hath drawne up a forme of Legall proceedings wch he intended to present him wth on his arrival at Bombay, wch forme wee would have him send up hither y^{t} wee may debate and consider thereof."*

Here is another interesting document lost to the legal world of Bombay, for, beyond the fact that certain forms of procedure were framed, we know nothing about them. The loss to the lawyer may not be great, but the antiquary cannot but regret it. George Wilcox was appointed a judge on August 8, 1672. He held his Court in a room near the Fort and was assisted by two justices; two days in the week were set apart for civil work and only one day in the month was devoted to the disposal of

* The Court of Directors sent out the Statute Book and other law books to the Company's servants in December, 1672, and with the help of these Wilcox must have attempted to draw up a sort of Civil Procedure Code.

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criminal cases.* He must have been well occupied, for in addition to civil and criminal work he was in charge of the register of probate of wills and inventories of dead men's estates. But Wilcox was evidently not a prosperous judge. For in 1677 the Bombay Government sent

"a petition of the Widdow of y^r late Judge Mr. George Wilcox, he having received no sallary here for the time that he was Judge here. She therefore begs y^r Hon^rs to consider her condition and order her ye pay^mt of w^t convenient sallary yor ho^rs shall deem her husband may have merited." †

Poor Madam Wilcox! We sincerely trust she had a pension deserving of a judge's widow. But we wonder why Wilcox, J., received no salary during his tenure of office in Bombay. Beyond the fact of his impecuniosity we know nothing further about him. When Wilcox died, in 1674, the Court of Directors again discussed the question of appointing a full-time judge, and finally decided that such a person was necessary. In a letter signed by Aungier and his assistants from Surat, dated December 18, 1675, there occurs the following interesting passage:

"As to ye Judges sallary, having respect as well to o^r M^rs orders as also to his present condition and ye quality of ye employ^mt, wee have ordered that his salary be £120 to be paid him quarterly, and to begin from his entrance into office, and y^t he be allowed a horse or Pallankeen with a Sumbrera boy, as also a Gowne yearley at the Comp^as charge, and he is req^rd to keepe an exact acc^t of all moneys rec^d and fines, and having thereout discharged w^t is layed out for ye sessions dinners, officers fees and public expences, ye remainder he is to pay into the Hon'ble Comp^as cash." ‡

The Governor fixed his salary at the magnificent sum of £120 a year, "having respect to his present condition and ye quality of ye employ^mt." § There lurks a sort of contempt in this sentence,

* Military cases were separately dealt with. When, in 1674, Shaxton was charged with inciting a meeting of the troops to rebellion, he was impeached before a select Court of Judicature and tried by martial law.

† Forrest's *Selections*, p. 122.

‡ *Ibid.* p. 78.

§ It should be noted, however, that £120 a year then would equal about £1,000 a year now. It was equivalent in purchasing power to a much larger sum, and compares not badly with the stipend of the judge of a small West Indian island, if allowance is made for this fact.

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but we may be doing Aungier injustice. Subsequent events, however, proved that he had a presentiment of the disrepute into which this high post was to fall through the alleged misconduct of its very first incumbent. One Mr. Nicolls was appointed to fill the post in 1675, but he had not been long in office when he was found unworthy of the charge entrusted to him. Indeed, he seems to have behaved himself with such arrogance and wilful disobedience that it is matter for wonder that he was allowed to retain the post for nearly two years. His tenure of office was also remarkable for two sentences which formed the subject of a remonstrance from the Court of Directors. In the first case, two natives were convicted of theft and executed; and in the second case, a European was convicted of the same offence and sentenced to slavery. The Directors, in their despatch to the Surat factory dated May 6, 1685, laid down that theft was not to be punished with death and that Europeans were not to be made slaves. It seems likely that the vagaries of the new Judge were tolerated simply because there was nobody to succeed him. But the patience of the Bombay Council was at last exhausted; they resolved to suspend him and dispense with a successor. They wrote at some length to the Governor at Surat, specifying the charges brought against Nicolls, J. This letter, dated August 20/28, 1677, is so full of interest for us that we shall quote it in full.

"Wee have long forebore," they wrote, "upon just sentiments to say anything concerning the Judge, but wee doe now find that ye good of the Island, ye content of the inhabitants and discharge of the trust reposed in us, does inforce us to seek a prevention of these bad consequences his carriage eminently does threaten, whereby your Hon^rs will perceive how little he has merited the honour of soe great a charge & how dissonant his carriage has been to those rules and principles which wee had thoughte the weight and gravity of his employ would have prompted him to. To mention, ye severall slightings & plaine abuses of most of the members of this Council, which perhaps their charity might have obliterated, had not more publique affronts wakened ye remembrance of them, his contempt of the Government, his slighting and scandalizing our Councills and authority, the passion and prejudice which have been the masters and guide of his actions, and the generall dissatisfaction of all people wth him has been so notorious, that wee cannot but imagine ye world has taken notice of it much to our prejudice. He did once say that nothing had been acted since ye Presi^dt went off the Island; and now lately in a case of Chancery decided by us, wherein the cause was not

adjudged to his liking, he did not stick to say that he now plainly saw that any man might sweare himselfe out of a debt that would, and that a knave should never want a friend in Court, wch wee leave to your Ho^nr^ to interpret how little master of reason, conscience wee should be, and how unfitt for that great trust reposed in us, should so much injustice be ye effect of our Councills, and wee cannot but take notice y^t^ ye bill exhibited to us in the fforementioned clause, ye Judge himself did confesse to draw up which is full of nothing but slanders, defamations, and privately taunting o^r^ superiors action, besides how unbecomeing ye gravity of such a place and indeed how contrary to equity for a judge to act the part of an Attourney." *

After bringing forward these general charges, the Bombay Council prefer certain specific accusations against him which are not less serious.

"There was lately exhibited to us," they continue, "a bill in Chancery against him by 12 men who were of a Jury at Justice Hall, who having brought in a verdict according to equity and good conscience were never the less publiquely checked and rated by ye Judge, telling them they were men of large consciences, desiring us to exempt them in future from the like duties except they can be protected in ye free discharge of their consciences, wch action may be of a very prejudiciall consequence; for either Jurys will deny to be impannelld, and consequently a due and just tryall of all causes will be ommitted to be acted. . . . And a tryall wherein ye same Jury had brought in judgment for ye deffendant, ye Judge yet ordered ye Clerk of the Papers to enter verdict for the plaintiff for ye cost and charges of the Court. To tell yor worp^s^ how much he has suffered his officers & servants to grind & oppresse ye people may seem dubious. Whether our connivance merrits more blame y^n^ his, it is not many months since wee did in a Gen^ll^ Letter hint our resentment of his oppinion of our partiality, wch made him appeale to a higher Court for justice in ye buisinesse between Mr. Child & him." †

The Bombay Council passed the following orders on August 20, 1677, while suspending Judge Nicolls:

"All these considerations being duly weighed wee found ourselves obliged, for the discharge of that trust reposed in us, to suspend his Commission, and have ordered that he act noe longer as Judge till wee receive your further orders concerning him; if our humble advices might be credited in the perticular, that ye generall benefit and satisfaction of

* Forrest's *Selections*, i. p. 135. † *Ibid.* p. 136.

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ye whole Island will be much advanced by the election of a new Judge, wee have for the present ordered ye remaining justices jointly to officiate till y^r Hon^rs shall please otherwise to dispose thereof."

And in order to give effect to the last part of their order they added:

"We have thought convinient to elect Capt^a Gary and Capt^a Keigwin to be Justices of the Peace for the Island, for it will be highly necessary that one Justice be assistant at Mahim and lesse than three will not be sufficient at Bombay, while there is noe Judge."

The Bombay Council suspended Nicolls, subject to the approval of the Governor. But the indictment drawn up by them was so damning that the Surat Council could not but approve of the action taken. In a letter, dated September 11, 1677, they write:

"We are very sorry that Judge Nicolls hath behaved himself so ill that he has given so general a dissatisfaction to the whole island. We do approve of what you have done in suspending him from his place and shall not countenance in the least any one under your Government that are so far forgetful of the (respect) they owe their superiors. As yet we (do not) determine of a qualified person for judge but reserve it to the decision of a fuller Council. In the meantime the justices of peace may officiate as you have ordered and we would have you advise us who you have on the island fitting for the employ." *

Such was the sad fate that befell Aungier's inauguration of the Bench in Bombay. It is a curious circumstance that the men who were appointed, *for the first time*, to fill posts of great responsibility and honour should have proved totally unworthy of their charge. For, as we have seen, the *first* Governor of Bombay under the Crown was dismissed for fraud and embezzlement; the *first* Deputy-Governor of Bombay appointed by the Company was found guilty of drunkenness and gross profanity and was sent home; and the *first* Judge of the town and island of Bombay was suspended for wilful disobedience to his superiors.†

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 5.

† It is but due to Nicolls, J., to note here that the Court of Directors eventually found that there was nothing against him. This makes it all the more

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It is clear from the following passage occurring in a letter which Aungier wrote to Bombay in 1675 that the absence of lawyers did not relieve the town from something much resembling a plague of speculative solicitors:

"As to ye Pursur of the *Mayboome* wee understand that he ran over board of himselfe in a violent fit of a frenzy, but ye *Mayboome* being now bound for Bombay, wee judge it convenient & doe require that the matter be examined in ye Court of Judicature at Bombay according to Law, y^{t} being a proper place for such cases, and y^{t} the said custom be held in all cases of ye like nature. And as wee desire that justice may be don so we would have you take care that vexatious suites and contrivances layed by common barristors * to disturb ye quiet of good people, may be discouraged, and prevented. And let ye judge know from us that wee expect he maintaine the gravity, integrity, and authorty of his Office; and that he doth not bring a disrepute on the Court of Bombay by lightness, partiality, self-seeking or countenancing common Barristors in wch sort of vermine they say Bombay is very unhappy." †

Gerald Aungier certainly did not mince matters here: he was a blunt, plain-spoken man. Nicolls, J. has been accused of many serious offences, but even he escaped the indignity of being compared to vermin!

Soon after the suspension of Mr. Justice Nicolls the question of reducing the Judge's salary came under consideration. He was, as we have seen, paid £120 a year—by no means a princely salary, in spite of the fact that he was to be allowed "a horse or Pallankeen with a Sumbrera boy, as also a Gowne yearely at ye comp^{as} charge." But the Bombay Council was of a different

difficult to say what justification the Bombay Council had in bringing those charges against the Judge and in finally suspending him on the strength of those charges having been proved. Perhaps Nicolls' greatest fault lay in his "setting up the backs" of an incompetent and resentful clique who had hitherto managed, or rather mismanaged, things in their own way. Even without attributing any malevolence to the factors, it is a possible hypothesis to suppose that they might have been irritated by the legal strictness of the Judge. Nicolls must have possessed some knowledge of law, and he therefore might have offended the local sense of rough equity.

* Clearly a clerical error for *barrators*. "Common barratry," or persistent stirring up of litigation, is an old criminal offence at common law. "Barratry" has nothing to do with "barrister" in point of etymology—it means "misconduct."

† Forrest's *Selections*, i. p. 81.

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opinion. In an interesting letter dated November 11, 1677, they observe:

"Wee doe not see ye absolute necessity of allowing 120 pounds to a Judge, not that wee would have ye Island destitute of a person invested wth authority to determine ye weightiest causes, but ye very name sounds too great for ye place. It lookes like the great Gate of little Perdus that made Diogenes afraid ye citty would runn out at them. Those who come to these parts are commonly mean persons or young men but very little skilled in our law, and ye name of a Judge does fill y^m^ with such a pride that they loose y^r^ reason in the contemplation of their greatness and think no man y^r^ superior, scarcely y^r^ equall; * and if he, that is ye principle Justice, be invested by ye same power and act by a full Commission, why is it not the same thing. It is not ye name that makes any difference. Ye Governments of provinces are committed to persons who are sometimes stiled Lieutenants, sometimes Deputys, and sometimes Viceroy, though y^r^ power is equall. Ye Com^ps^ formerly ordered that only some one of y^r^ ffactours that was a sober and discreet person might officiate that place, who wee suppose would be well satisfied to have only ye proffit of ye Seals allowed him to his sallary wch ye former Judge had. There is Mr. Gary or Mr. Robert Harbin, very fitting persons for such an employ^mt^ or whom else your Wor^p^ shall please to appoint, wch pleas to order so soone as may be, for none of the Justices by the Commissions can sit upon life and death, but only as assistants. Wee imagine a joint Commission for so many Justices of Quorum will doe better than singly invested in any one person. This is only but our opinions, wch your Wor^ps^ better judgment can correct." †

The above extract exactly describes the situation as it then was in Bombay. The very name of Judge "sounds too great for ye place." And yet the city was fast filling with men who flocked into it from outside. No better proof of the success of Governor Aungier's administration can be adduced than the fact that when he assumed charge of his post in Bombay the population numbered only 10,000 souls, but at the time of his death, eight years after, it had reached nearly 60,000, whilst the revenue had also increased from £2,823 to £9,254. The authorities had, therefore, to revise their opinion regarding

* The very same complaint was made (we believe by Mr. J. Chamberlain) some years ago in respect of the title of "Chief Justice" conferred on the magistrates of small West Indian islands. It was thought to induce an inclination to assume the arbitrary powers which are willingly conceded to the head of a great judicial system.

† Forrest's *Selections*, i, p. 140.

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the necessity for a judge, for, only a month after, we find them advocating the appointment of this officer. They write:

"A Justice of Peace does not receive a penny of sallary, and as to ye Register wee have no such office on ye Island, and should one be created it would not be worth to him a groat a day without a sallary. He that is Judge or Chief Justice (wch is ye same thing) keeps ye register, and if another have sallery for that place, it is giving two mens wages for the officiating ye same place, for wee suppose a Judge will be made and a convenient sallary settled on him whose Commission hitherto has always been joined with that of Register, the businesse of that place being so very small. What yor Wor^ps shall order in ye particular wee shall readily perform." *

If the rise in the population of Bombay and the increase in its revenue testify to the success of Gerald Aungier as an administrator, the fact that, on his death, its affairs got completely out of order and even beyond the control of the President and Council, equally proves his merit. The man at the helm had set forth on another voyage, and there was nobody to steer the ship into harbour. The historic city of Surat was now enveloped in utter darkness, for her sun had set, ushering in a long night of disease and disorder. The extent of the loss may be measured by the fact that the population of Bombay, which had grown from 10,000 souls to 60,000 during Aungier's *régime*, again dwindled down to 16,000 within the brief space of only forty-one years (1677 to 1718). On Aungier's death the administration of the Presidency devolved on one Mr. Rolt, the Agent at Gombroone, and the government of Bombay on Mr. Henry Oxenden, nephew of Sir George. But the man most talked of in India about this time was Sir John Child, brother of the famous Sir Josiah. Child came out to India when he was barely ten years old, and by dint of energy and enterprise, backed by influence at home, he seems to have risen rapidly in the service of the Company. Procuring the dismissal of a dishonest uncle, under whose charge he was at Rajahpur, he managed to step into his shoes, and in 1681 got himself appointed President of the Surat factory. Taking advantage of his position, Child appointed his own brother-in-law, Ward,

* Forrest's *Selections*, i. p. 142.

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Deputy-Governor of Bombay.* But neither the efforts of Ward † nor Child's own exertions had any effect on the state of affairs in Bombay. These had gone from bad to worse, and in 1682 they were reported to be so perilously bordering on chaos that the authorities at home were seized with alarm. In that year, while sending out certain orders to make Bombay a place of considerable trade and business, they wrote to the Deputy-Governor and Council as follows:

"Bombay hath been so monstrously out of order and overgrown with riot, prodigality, carelessness and folly, that though in his time Mr. Child did as much as we could hope for towards a reformation in so short a time, yet such was the obstinance of the matter contracted by expensive and vicious habits that it was too perverse and hard for him to correct at once. But he having laid the foundation of a more frugal and careful managery, you will be infinitely to blame if you do not perfectly finish that which was with more difficulty begun by him. This of the two is far the easier task, there being in government as well as in mechanics a great truth in that old adage, *facile est inventis addere*." ‡

Indeed, they were so keenly alive to the necessity of adopting strong measures that they suggested the removal of "all old incorrigible lumber out of the way," and gave full authority to the President and Council at Surat "that whoever in their judgment and consciences they shall find unfit for our services, they turn out in a summary way without the formality of tedious, impertinent, chargeable examinations, attestations, certificates, letters, or other trumpery." And in order to strengthen the hands of their agents in carrying out this work of retrenchment and reformation, they sent them next year (1683) an authentic copy of a new charter granted by the King. This charter professedly aimed at the suppression of interlopers, whose influence in the Indian seas had grown to an alarming extent, and whose

* The Childs were known for their nepotism, and Sir Josiah himself has been accused of using his position in the Company to forward unduly the interests of himself and his relatives (*Dictionary of National Biography*, x. 244).

† Ward was afterwards found guilty of playing the traitor. Four letters were detected which proved that he was tampering with Shivaji to help him to bring to port a fleet in Bombay. When confronted with this unimpeachable evidence of his guilt he was unable to make a defence and was made a prisoner (Hamilton's *A New Account of the East Indies*, i. p. 190).

‡ Campbell's *Bombay Gazetteer Materials*, xxvi. p. 82.

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depredations the authorities were unable to check or adequately to punish. But it also gave other powers to the Company, for instance, to declare peace and war with any of the "heathen nations," to raise forces for that purpose and to exercise martial law. But the most important clause in it for our purpose was the one which created the Deputy-Governor of Bombay Judge-Advocate there. This marks another epoch in the early history of the Bombay High Court. After reciting the Confirmation of the Charters of Elizabeth and James I., and the monopoly of trading thereby granted to the Company, the Charter of 1683 established a Court of Judicature to be held at such places, forts, plantations, and factories upon the coast as the Company should from time to time direct, and to consist of "one person learned in the civil law* and two merchants," to be appointed by the Company, with power to determine what may be briefly described as all mercantile and maritime cases, and to inquire into trespasses, injuries, and wrongs committed upon the high seas, or in the trading limits of the Company in Asia, Africa, and America, "according to the rules of equity and good conscience and according to the laws and customs of merchants." The first person who had the distinction of being sent out to India by the Company as Judge-Advocate, with the reputation of being "learned in the Civil Law," was Dr. John St. John. But before introducing the learned judge to our readers, let us, even at the risk of a little digression, refer to a point of some importance to which Sir Michael Westropp calls attention in his historic judgment. In the report prepared by the Commissioners who were sent out from Surat in 1668 to take possession of Bombay on behalf of the Company, they had suggested that "as disputes must arise from the habits of the people, accustomed to Civil Law [for instance, the Portuguese], a Judge-Advocate might be appointed to take cognisance and decide in such cases." Apparently as a temporary measure, Gerald Aungier formed two Courts of Judicature on the island, the inferior Court consisting of a Company's civil servant assisted by two natives, which was to take cognisance of all

* *I.e.*, the Roman Law. The establishment of such a court to determine mercantile cases according to the custom of merchants, and in the light (to put it no higher) of the Roman jurisprudence, is highly interesting, as anticipating the work of Mansfield in England.

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disputes under the amount of 200 xeraphins, and the superior Court to consist of the Governor or the Deputy-Governor and Council, to whom all appeals lay from the inferior Court; the superior Court also took cognisance of all civil and criminal cases whatever, and its decisions were to be final and without appeal, except in cases of the greatest necessity.* On the strength of the Commissioners' recommendation, the eminent counsel for the appellant in *Naoroji Beramji* v. *Rogers* (Mr. Edward Howard) contended that at the time *civil* law rather than *common* law prevailed in Bombay, and that by the expression "civil law" was meant the law of the Romans. He further argued that the appointment of Dr. John St. John (a Doctor of Civil Law) was a compliance with the recommendation of the Commissioners. But Westropp, C.J., was of the contrary opinion. The phrase "civil law," he thought, coupled as it was with civil cases, was probably used by the Commissioners in contrast to military or martial law, and not as meaning the Roman Law. In support of this view, he quoted a portion of a letter from the Court of Directors in 1670–71 (thirteen years *prior*, it will be noticed, to the date of the charter), which, while approving of the plan of civil administration of Governor Aungier, explained

"that care should be taken that trial by jury should be introduced into the Courts of Justice, agreeably to English law, but declined engaging a judge versed in civil law, being apprehensive that such a person might be disposed to promote litigation, and probably might not obey the orders which the President and Council might find it for the interest of the Company to give him: it had, therefore, been resolved to send some persons who had received education in law, as civil servants, without making the practice of the law their only object, and if they

* This raises another doubt. Were these Courts in existence when Aungier divided Bombay into two precincts, in each of which five justices of the peace, all Englishmen, administered justice? Presumably they were, for the justices were empowered to try cases not exceeding in value 5 xeraphins, whereas even the inferior Court established in 1669 could take cognisance of all disputes involving sums of money not exceeding 200 xeraphins. But we do not see any material difference between the superior Court then established and the Court of Appeal mentioned in the Consultation of February 2, 1670. A point worth noticing here is the appointment of two *native* officers to assist the Company's civil servant in the inferior Court—probably the first instance of co-operation between the rulers and the ruled in the realm of judicial administration.

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deserved well, they might be appealed to, as assistants in the Courts of Justice."*

The learned Judge is borne out to a certain extent in his contention by the following observation which Fryer offers in his book concerning the judicial affairs of Bombay at this period :

"The Government here now is English; the soldiers have martial law, the freemen common, the chief arbitrator whereof is the President with his Council at Surat; under him is a justiciary and Court of Pleas, with a committee for regulating affairs and presenting all complaints." †

"The administration of the Common Law as described by Fryer," adds Sir Michael in concluding this portion of his judgment, "is in complete accordance with the charters 13 Car. II. (3rd April, 1661) and 20 Car. II. (27th March, 1668) which made over Bombay to the Company. The constitution of the two civil Courts, as described by Bruce, was warranted by those charters when taken in combination. The use of military law (mentioned by Fryer) for military purposes was countenanced by the latter charter." ‡

But, *pace* the learned Chief Justice, what was authorised by the Charter of 1683 was a Maritime and Mercantile Court. And the judge of a Maritime Court was necessarily a civilian, versed in the Roman Law.§ But let us return to Dr. John St. John.

* Bruce's *Annals*, 2, p. 279. The apprehension of the directors regarding the possibility of a conflict between the judge versed in civil law and the authorities in India was well founded, and in the case of Dr. John St. John it was unfortunately verified, as we shall presently see.

† *East Indies and Persia*, p. 68. Dr. Fryer was apprehensive of the manner in which the President and Council would exercise the large powers vested in them by various charters. For in another part of his book he observes: "In this exigency on either side, the martial as well as civil affairs are wholly devolved on the merchants, and now how they will manage the Sword as well as the Quill concernes them." Happily, however, his apprehension was ill-founded, for the factors handled both the sword and the quill adroitly and with remarkable success.

‡ 5, Bombay High Court Reports, p. 49.

§ It will be observed that Sir Michael Westropp did not agree with Mr. Howard as regards the meaning of the phrase "civil law" occurring in the Charter of 1683. But although Sir Michael cites authorities to prove that "civil law" did not mean the law of the Romans, it is by no means certain that the first incumbent of the place, Dr. John St. John, was not a *Roman* lawyer. For it must be remembered that his principal work was in the Admiralty Court, and Admiralty judges were always "civilians" in this sense. And his doctor's degree absolutely clinches the matter. The real difficulty

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There can be little doubt that the state of chaos which had prevailed at Bombay for some time past was the immediate cause of the grant of this new charter. Disease and disorder were manifest everywhere. Trade in Bombay deteriorated to an alarming extent and the revenue in consequence shrunk considerably. Crime of the vilest nature was rampant on the island, which was then infested by interlopers, pirates, and other undesirable characters. Perhaps the most succinct account of the period is the one given by Dr. Geirson da Cunha:

"The last quarter of the seventeenth century," he says, "was not only devoid of any great achievement or of any appreciable progress in manners and morals, but was, on the contrary, a witness to sedition and strife—immorality, unhealthiness, and anarchy at home, and invasion, piracy, and arrogance abroad." *

The picture appears to have been drawn in sombre colours, but it fairly represents the state of affairs in Bombay at the time. The claims of justice were set at naught and the majesty of law was ridiculed. Those who were responsible for the administration of justice felt the utter hopelessness of their task, so much so that they were at length obliged to close the very doors of the Courts of Judicature. For we have it on the authority of Bruce and Anderson that for the eleven years immediately preceding the dawn of the eighteenth century no court of judicature was held on the island of Bombay. It is easier to imagine than to describe the state of lawlessness that must have prevailed then. Every man did as he liked and what,

lies in the attribution of mercantile cases to be judged "according to the laws and customs of merchants." The question here arises, Did this oust the common law in such cases? It should be noted that in 1683 the common law was practically devoid of rules in mercantile cases. Mansfield worked the subject out a century later. It is, therefore, not right to read the charter as introducing the civil or Roman Law *as such*, but merely as appointing a judge who should administer maritime law on Admiralty principles (which involve a knowledge of Roman Law), and mercantile law according to equity, good sense, and mercantile custom (which equally involved a knowledge of the common customs of European merchants, also based on Roman Law). It almost seems an anachronism to talk, as Westropp, C.J. did, of English "common law" in mercantile matters in 1683, for it had not been evolved then, and was not evolved until the latter part of the eighteenth century by Mansfield, and then very largely on Roman Law principles.

* *Origin of Bombay*, p. 306.

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in his opinion, was right. In short, the Imperial town and island of Bombay was abandoned to a set of vagabonds, simply because there were not men sufficiently strong to govern it. To make matters worse, the Court of Directors enjoined strict economy, and cut down the salaries of military officers. This supplied the spark which ignited the inflammable material. The military rose in open revolt, and under their intrepid leader, Captain Keigwin, took forcible possession of Bombay. These events must have hastened the grant of the Charter of 1683; for in its recital of the reasons for the creation of the new courts it referred to the many "disorders and inconveniences which have happened and been committed" by British subjects and foreigners in Bombay. Those who were responsible for the good government of Bombay had frankly acknowledged their inability to cope with the situation; the Directors had thereupon resolved to send out a man well versed in civil law direct from England, possibly with the view of overawing the mutineers and other mischief-makers. The experiment was fraught with some danger, for, as was surmised by the Court of Directors some years before, there was the possibility of his coming into conflict with the President and members of Council. But the disorders of the body politic demanded heroic remedies, and the authorities were bent upon taking the risk. The despatch which the Court of Directors sent to the President at Surat on April 7, 1684, is a highly interesting document, for it refers in detail to the appointment of Dr. John St. John, the Judge-Advocate, his qualifications and salary, with full instructions regarding his status and position in India.

"'We have chosen,' they wrote, 'Dr. St. John, Doctor of the Civil Law, to be Judge of the Admiralty Court* in the East Indies and of all our maritime affairs there, to be erected in pursuance of His Majesty's additional charter of the 9th August last (1683) at the salary of £200 a year, and to have the accommodation of his own diet at the Governor's table at Bombay, but all other accommodations for himself and his two servants are to be at his own charge, and to take place at the Governor's table as second. We therefore order and direct that a convenient place be assigned him for holding the Court of Admiralty, and that you appoint such officers as are necessary to attend that Judicature which is designed for proceeding against all interlopers and private ships and persons trading in the East Indies or to or from the East Indies,

* Not of the common law courts.

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contrary to His Majesty's Royal Charter granted to us. For the honour of our nation and more perfect information of all persons that are and shall be concerned in the proceedings of that judicature, we do expressly order and direct that the whole process of that Court be carried on in English, and not in Latin, in all the Commissions, Acts, Constitutions, and sentences thereof, and that you do take care that a table of fees be agreed on and published for all processes, writs, summons, adjudications, sentences and decrees, and all other things that are or shall be passed in the said Court, and to all officers attending the same, which are not to be exceeded, upon some moderate penalty to be therein inserted and published. His Majesty hath been pleased upon our approbations of him to grant Dr. St. John a commission under the great seal of England to the purpose aforesaid. For which also he hath our commission under our larger seal, a copy whereof we herewith send you, and he is from time to time to transmit unto you, as also to represent unto the Deputy-Governor and Council of Bombay an impartial account of all his proceedings, as Judge of the said Court. But all other judicatures * upon our said island are to remain in the same condition and order they now are and under the management of the same persons, until you receive further orders after we have an account from you of the good deportment of the said Doctor." †

From the above quotation it will be seen that the Court's instructions to the President and Council of Bombay were very precise, even to the point of assigning the Judge's place at the Governor's table and providing for the accommodation of his own diet. It is worth noting also that the proceedings of the newly-constituted Court of Judicature were to be kept in English—a point insisted upon by Gerald Aungier—and that all the judicatures already established on the island, by virtue of older charters, were to continue in the same condition and order. It is not clear why the Directors sanctioned a provision which was bound to bring Aungier's courts into conflict with the one about to be presided over by Dr. John St. John, except, perhaps, that they intended the Judge versed in civil law to confine himself strictly to all mercantile and maritime cases. There was already a Judge-Advocate in Bombay—the Deputy-Governor having been only recently elevated to that dignity by the Charter of 1683. But as he was not able to grapple with the situation, the Directors may have thought of overawing the turbulent and the lawless by sending out another Judge-Advo-

* *I.e.*, the common law and criminal courts.

† Campbell's *Bombay Gazetteer Materials*, xxvi. part i. pp. 83–84.

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cate, straight from England, investing him with the authority of a Royal Charter. If such was their idea, however, they must have been sorely disappointed, for the coming of the Judge did not improve matters. But let us not anticipate events.

Although the Admiralty Court was to be established in Bombay, as being a possession acquired by the Crown and by it vested in the Company in full property, we find that the Commission with which the new Judge was armed was, in the first instance, published at Surat, and the Court was erected there on September 17, 1684.* On arrival, he found the island in the grip of the mutineers, under the banner of Captain Keigwin, who professed to hold it on behalf of his Majesty the King of England. We shall describe this interesting and harmless episode in another chapter; but we must touch upon some of its salient features here in order to make the events that follow more intelligible. Dr. John St. John found the situation rather precarious. He was prevented from landing in Bombay by the mutineers, and had to go to Surat. The mutineers were obstinate, though perfectly loyal and law-abiding; neither threat nor persuasion could induce them to lay down their arms. In order to invest the Judge's Commission with greater authority than the Royal Charter had intended to give it, it was declared that their case would come under the cognisance of a King's Judge and be tried in a more summary manner (whatever might be the result of the revolt) than if their conduct should become matter of judicial investigation and decision in England. But even this ruse proved of little avail. Admiral Sir Thomas Grantham was at last sent out from England with the express purpose of quelling the mutiny. On October 16, 1684, a Consultation was held at Surat, at which the President (Sir John Child) and Council, Dr. St. John and Sir Thomas Grantham anxiously deliberated upon the gravity of the situation, the question at issue being whether they should employ force or persuasion to induce the mutineers to surrender. Luckily, it was decided to resort to persuasion, and the English Admiral had not much difficulty in getting back this tight little island from Captain Keigwin on promise of pardon to himself and his men. It was formally surrendered to Sir Thomas on

* Bruce's *Annals*, 2, p. 538.

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November 19, 1684, who immediately transferred it to Dr. St. John as the King's Judge, by whom it was delivered over to Mr. Zinzan, the then Deputy-Governor of Bombay, on behalf of the Company. St. John seems to have played an important part in this episode. Soon after his arrival in India he drew up a very able report, which he addressed to the King in Council, on the general state of the Company's affairs and the particular causes of the revolt in Bombay. On the former of these points he represented that the aggressions of the Portuguese and the Dutch had been so great and so long continued that it was impossible for the English trade to continue in India for three years, unless his Majesty should adopt effectual measures for restraining their proceedings and protecting his rights and those of his subjects in the East Indies. But it is his opinion on the latter point which is of greater interest to us. He seems to have realised, in a remarkably short time, the causes which led up to the revolt, and was able to draw up an indictment against Captain Keigwin which the latter would have found some difficulty in answering in a court of law.* St. John was of opinion that the rebellion had arisen from the depredations of interlopers, with whom Captain Keigwin, whom he dubbed the "Oliver and Protector of the Island of Bombay," was intimately associated, and who, though he had used the King's name and authority in his proceedings, had, on a full examination of all the facts, been found to have been influenced solely by predatory and rebellious motives.† At the same time he acquitted the President, Sir John Child, of any complicity or blame in the matter. After a careful examination of his conduct, the learned Judge stated that during his twenty-five years' career in India Child had maintained a steady loyalty to his King and country, and an uninterrupted probity and activity in his administration of the Company's affairs. In conclusion, he gave it as his advice to the King and Council to appoint President Child to be the King's Lord Admiral in India, with full powers to seize and bring to justice interlopers of every description. Whatever may be the merits of this report, it is due to the Judge-Advocate to say that it met with

* Sir George Birdwood writes enthusiastically of Keigwin even as a mutineer, and calls him a "splendidly brave man."

† Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 94.

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general approval, and that his Majesty was graciously pleased to follow his advice.

Shortly after the mutiny was quelled and some semblance of peace and order had been restored on the island, St. John seems to have formally opened an Admiralty Court in Bombay. But beyond the fact that it was so opened, nothing is known as to the exact place in which it was held, the method of the administration of justice in it, or the way in which the learned Judge acquitted himself on the Bench. We cannot but regret the lack of reliable information on these interesting points, owing to the absence of records for the period. The Admiralty Judge must have expended a vast amount of learning in the discharge of his duties, and it would have been entertaining as well as instructive to peruse the arguments of the parties and their agents and the decisions of the presiding Judge. The number of interlopers and pirates in and around Bombay had greatly increased, and St. John must have been kept fairly busy. Imbued with the freedom and independence of an English lawyer, he must frequently have come in conflict with the Company's officers in Bombay. There is at least one instance on record which shows the stuff the Judge was made of. On assuming charge of the Admiralty Court in Bombay, the President, Sir John Child, seems to have restricted him to the determination of only maritime cases, contending that his Commission and the provisions of the charter gave him no authority to try any civil actions. St. John, however, construed the charter differently.* He contended that he had a right to try all civil actions and that it was an unwarrantable curtailment of

* "The peculiar constitution," says Sir Michael Westropp, "of the new mercantile and maritime courts, which were to consist of one person learned in the civil law and two merchants, who were to decide according to the laws and customs of merchants, was used as an argument in *Jebb* v. *Lefevre* in favour of the proposition that lands amongst a commercial community would have been treated as assets for the payment of all debts. Sir Charles Grey, C.J., dealing with that argument, says: 'The Courts established by Charles II. and James II., in which a person learned in Civil Law was to sit, and everything was to be decided by the Law Merchant, may be entirely laid out of consideration, for the Letters Patent from which these courts derived their authority specify particularly what causes they are to entertain, and it is quite plain that they had no jurisdiction to hold any plea respecting lands or houses, or any interest in them, whether chattel or real'" (4, Bombay High Court Reports, p. 53).

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his authority to restrict him to the determination of only *maritime* cases. But the President would not yield, not even before the superior learning of the lawyer. He had already appointed one Mr. John Vaux to be the Judge in Bombay to try *all civil actions*, and retained him in that post even after the arrival of Dr. St. John, because, says Anderson, the latter "was not found sufficiently tractable and forward in persecuting private traders." The learned Doctor bitterly complained in a letter to Sir Leoline Jenkins, the then Secretary of State, that a man ignorant of law, and utterly unqualified for the duties of the Bench, should have been thus thrust into this responsible office; but there is nothing on record to show that his complaint received the attention it deserved. Meanwhile, both the President and the Judge stuck to their individual opinions. The learning of the latter and the obstinacy of the former were the chief impediments in the way of a compromise. Matters came to a head about the middle of 1686, when one Robert Clark was tried for murder by Deputy-Governor John Vaux. In submitting the records and proceedings of the trial to the President and Council at Surat, as they were enjoined by law to do, the Bombay Council wrote on September 6, 1686, as follows :

"This serves to accompany ye inclosed wch is a coppy of ye tryall of Robert Clark, a man y^t^ kill'd ye Gunners mate of his Majesties shipp *Phœnix*. Y^e^ man who was kil'd had neither sword, knife nor staff in his hand, but was drunk and abusive. Our Deputy-Governour has not passed sentence of death on ye said Clarke, but stayes till he knows your Excy^e^ &ca. pleasure whether you will have him acquitted or have him suffer. Our opinions you will see in ye inclosed." *

But it is the entry in their letter of September 27th which is still more interesting and apposite :

"As to ye trying of Robert Clarke by ye Court of Judicature," they wrote, "ye Judges advice o^r^ opinion is of little value; the laws of warr say quite another thing so y^t^ if your Exc^y^ please to adheare to Dr. St. Johns advice as to governing of an island or garrison, ye Deputy Governour never expects anything but confusion, for he dare sweare if we doe not punish souldiers by martiall law, noe officer nor inhabitance can be safe in their lives or estates. We know ye common law will

* Forrest's *Selections*, i. p. 145.

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cleare Clarke for murder, and so it will any man for theft, great part of ye Jurymen not knowing how soon it may be their turnes to be brought to ye barr on the same scoare. Y^e^ Deputy-Governour is sure Sr Josia Child is wholly for governing p. martiall law and has been at a great deal of trouble to obtaine it in times past, and now write to y^t^ purpose; however will submitt to your directions, and Clarke shall be tryed accordingly that he may live and murder some other poore man." *

From these two extracts it would seem that the Judge-Advocate and the Deputy-Governor had fallen out over the mode of the trial of Robert Clark, as to whether the culprit was amenable to martial or common law. The former, however, cannot be said to be gratuitously officious in claiming exclusive jurisdiction in the case. For though Clark's trial was neither an ordinary maritime cause nor a civil action, still, as an offence committed (as it seems) on a King's ship, it fell within the jurisdiction of the Admiralty Court on its criminal side. As is well known, the Admiralty Court has jurisdiction to try all offences committed on the high seas and in foreign waters below bridges—possibly also on board a King's ship even though not on the high seas. On the other hand, the Deputy-Governor's naïve preference for the summary justice of martial law is also excusable. What makes the above extract more interesting, and even amusing, is the reason assigned by the Bombay Council for thinking that the common law would clear Clark of the charge of murder, namely, that the greater part of the jurymen were not sure when it might be their turn to be brought to the bar on the same score. This would seem to show that Judge Nicoll's mean opinion of Bombay juries was not quite unwarranted. It is certainly not complimentary to the jurymen of the period; nor can it be quite fair to them, for we are loth to believe that the jury at the end of the seventeenth century were empanelled from the ranks of thieves and murderers. Notice also the almost threatening tone, mingled with despair, in which the Bombay Council wind up their letter—"however will submitt to your directions, and Clarke shall be tryed accordingly that he may live and murder some other poore man." It would be interesting to know how the matter was decided by the President; it is not improbable that the Deputy-Governor scored a victory over the Judge. We hear of Dr. St. John till 1690,

* Forrest's *Selections*, i. p. 146.

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though Sir Michael Westropp thinks his career as a Judge in Bombay must have ended at an earlier date.* Bruce is responsible for the statement that certain allegations were made against St. John for having identified himself with some of the interlopers, but beyond this vague and unfounded accusation there is nothing to prevent us from concluding that the first Admiralty Judge of the town and island of Bombay returned home with an unblemished character, and passed the rest of his days in some other profitable employment or perhaps in honourable retirement.†

We must not omit to say a word or two about Mr. John Vaux, the Civil Judge. Not that an outline of his career would add lustre to this period of the history of judicial administration in Western India, for, according to contemporary authorities, if ever there was a man who disgraced the Bench by dealing out unequal justice in Bombay, it was Mr. Justice Vaux. In an impartial account such as the one we have attempted to write, we feel bound to say something about him, even though it reflect no credit on the administration of justice while Child was at the head of the Government. According to Hamilton, Vaux had been book-keeper to Sir Josiah Child in England, and for his good services was appointed by his master, who used him as his tool, to a supercargo's post in a ship bound for China in 1684.

* "There is some evidence," says Sir Michael, "in the correspondence of the Bombay and Surat Governments that the office of Admiralty Judge was, subsequently to the retirement of Dr. St. John, held for a short time by Dr. Davenant."—4, Bombay High Court Reports, p. 51.

† Since the departure of Dr. St. John, there is no positive evidence that another person, learned in the civil law, was sent out from England to succeed him (though Sir Michael mentions a Dr. Davenant as his successor). But that the authorities expected one is made clear by an entry in a Bombay letter to Surat, dated October 9, 1696. "We are," runs the entry, "in hourly expectation of our ships which we hope will bring out some person learned in the laws qualified for a Judge whereby we may erect a Court of Judicature." Unfortunately, the frequent gaps in the series of these intensely interesting letters give us no clue as to whether this expectation was fulfilled or not, though from the fact that no court of judicature had been held in Bombay for the eleven years prior to 1701, it would seem that no one was then sent out from England to succeed Dr. St. John. The letter dated August 27, 1688, from the Court of Directors to Bombay, is interesting in this connection, for therein they complain that "the fees of the Admiralty Court are grown to an exorbitancy and the delays are extreme," and therefore directed the Bombay Council to revise the scale of fees and regulate the business of the Court.

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But having fallen out with the captain, Vaux gave up this post and boarded a ship which was making for Bombay. There he was entertained in the Company's service as a factor, and wrote to Sir Josiah his reasons for coming out to India and his determination to stay in Bombay. Sir Josiah continued to cherish esteem for Vaux and procured him several profitable posts, and at last prevailed upon his brother in India to constitute him Judge in Civil Affairs, which, says Hamilton, "brought him both a good salary and perquisites."

"After he was installed in that office," continues Hamilton, "Sir Josiah wrote him a letter of admonition and reminiscence, wherein, after many postulates, he put him in mind of the many favours he had done him, and that now, having the power of condemning the Company's enemies, or such as should be deemed so, particularly those who should dare to question the Company's power over the British subjects in India, he expected his orders, from time to time, should be observed and obeyed as statute laws."

The audacity of the proposal made in this letter was quite in keeping with the not too scrupulous character of the man who ruled over the East India Company, in the last quarter of the seventeenth century, with the absolute power of a despot. Sir Josiah must have felt sure that Vaux would follow his instructions with the meekness of a slave. A creature of his own making, he thought he could command him as he liked. Vaux, while gratefully acknowledging Sir Josiah's favours, promised that, as he had put him into that post of honour and profit, he would strive to acquit himself with all the integrity and justice he was capable of, but inadvertently added that "the laws of his country should be the rule he designed to walk by." This latter observation upset the equanimity of his imperious patron. It must have shocked him to hear that this puppet of his had decided to act according to the laws of his country, for Sir Josiah fancied himself above all laws. He lost no time in sending a reply which was also characteristic of the man.

"In answer to that letter," Hamilton adds, "Sir Josiah seemed to be angry, and wrote roundly to Mr. Vaux that he expected his orders were to be his rule, and not the laws of England, which were an heap of nonsense, compiled by a few ignorant country gentlemen, who hardly knew how to make laws for the good government of their own private

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families, much less for the regulating of companies and foreign commerce."*

It would seem almost incredible that a man of the eminence of Sir Josiah Child should have referred to the laws of his country with such supreme contempt, and characterised them as "an heap of nonsense," did we not know of more recent examples of imperial disdain for England. Having regard to the antecedents of the author of this story and his well-known antipathy towards the Childs, one would be naturally slow to accept his version of it without independent evidence. But Hamilton appends a note to it which forces conviction home. "I am the more particular in this account," he adds, "because I saw and copied both those letters in Anno 1696 while Mr. Vaux and I were prisoners at Surat on account of Captain Evory's robbing the Mogul's great ship, called the *Gunsway*." The more's the pity, say we. We do not know if Vaux shared his patron's mean opinion regarding the laws of England. To think that such a person—a book-keeper not many years ago—ignorant even of the rudimentary principles of law and without a vestige of self-respect in him, dependent almost to the point of servility and a tool in the hands of an unprincipled despot, should have at one time presided over the Bench in Bombay! Vaux's is another name to be added to the list of those inefficient and cringing men who were responsible for the maladministration of Bombay in the seventeenth century. On the death of Sir John Child, in 1690, Vaux was made Deputy-Governor, but he could not have enjoyed this dignity long. Even then his mind was so debilitated that, according to Hamilton, "he was but few degrees wiser than an idiot." Two years after, he was accused of treason and suspended from office, and in 1697 was accidentally drowned in the river Tapti.†

This chapter is drawing to a close. There are few charters of any importance which deserve a detailed notice here, until we come to the famous Charter of 1726, which established a Mayor's Court in the three Presidency towns of India. It may be noted here in passing that by a commission dated January 20, 1685, reciting the Charter of 1683, the Company appointed Captain

* *A New Account of the East Indies*, i. p. 235.

† Anderson's *English in Western India*, p. 257.

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John Nicholson,* Vice-Admiral of the fleet of ships bound for the Coromandal Coast, Judge-Advocate of the Court of Admiralty in the Bay of Bengal, both at sea and on shore, during that expedition, and such two out of five factors as might be nominated by the Agent and Council at the Hooghly to be the Judge's assistants. The next charter of some importance was that of 1686; it recited the provision in the charter immediately preceding it regarding the establishment of a Court of Admiralty, and also referred to the charters of Elizabeth and James I. After reciting all the charters granted by Charles II. (especially including those of 1661 and 1669), it ratified and confirmed all of "the said Charters and Letters Patent," and gave, granted, constituted, erected, and established unto the London Company "all such, so many, and the like rights, &c., jurisdictions, &c., courts and authorities together with such covenants, and subject to such provisions, and in such manner and form to all intents and purposes," as the London Company ever had or enjoyed, &c., "by force or virtue of all or any of the before recited Letters Patent."

"This confirmation," observes Sir Michael Westropp, "clearly includes not only the new courts established for mercantile and maritime causes in 1683 by Charles II., and renewed, so to speak, by this charter of James II. in 1686, but also the courts of English law, the establishment of which was sanctioned by Charles II. by the Charter of 1661, or authorised by the Charter of 1669."

There was yet another charter granted to the Company next year, and although it appertains to the Presidency of Madras alone, it is so remarkable in the powers it confers that it may be considered worth noticing here. It was regarded as one of the prerogatives of the Crown to constitute municipal corporations by the grant of royal charters—a prerogative always most jealously guarded. But in 1687 James II. showed a signal mark of his royal favour by delegating to the East India Company the power of establishing by charter a municipality at Madras.† A charter was accordingly granted to Madras. After its grant the question

* The Charter of 1683 required the Judge-Advocate to be "a person learned in the civil law." But there is no evidence to show that the gallant Captain answered to this description, unless he did so *ex officio*.

† Why this favour was not extended to the other two Presidencies, it is difficult to say. It may be that Madras was then considered the premier Presidency in India. But it is worth noting that in that very year the

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arose as to whether it should be passed under the Great Seal or under the ordinary seal of the Company. To us such a question does not seem to call for anxious discussion at a Cabinet Council, but it was seriously argued by both parties at the time, and it was eventually decided, at the instance of the Governor and Deputy-Governor of the Company, that the charter should be granted under the Company's own seal. The reasons assigned for the adoption of this course are, as Sir Courtenay Ilbert observes, "curious and characteristic." The Governor was emphatically of opinion that no persons in India should be employed under immediate commission from his Majesty, "because the wind of extraordinary honour in their heads would probably render them so haughty and overbearing that the Company would be forced to remove them." Sir Courtenay is probably right in his surmise that when the Governor was thus expressing his frank opinion on the matter, he had perhaps had in his mind the recent differences between Sir John Child and Dr. St. John over the proper jurisdiction of the Admiralty Court. It is not a little curious to observe that, whenever the experiment of establishing an independent judiciary in the various Presidencies in India was tried, it proved more or less a failure, as the Judge almost invariably came into conflict with the servants of the Company. St. John's appointment as Judge-Advocate under his Majesty's commission, and the events that occurred during the tenure of his office as Judge, did not encourage the Company to try a similar experiment at Madras. The same feeling prevailed when a Mayor's Court was established in each of the three Presidency towns in 1726. Although the Court of Directors then admitted that "from want of thorough knowledge of our laws slips in the execution of them had sometimes been made by his Majesty's Justices of the Peace," they did not yet recommend the appointment of trained lawyers to preside over the new tribunal. The conflicts between Warren Hastings and the Supreme Court of Calcutta in the next century were also due to the same cause. But it should be remembered that the fault did not lie entirely with the independent judiciary, nor was the conflict always due to the haughty and overbearing manner in which the English Judges sometimes conducted them-

Company's seat of commerce and centre of authority on the Western Coast was removed from Surat to Bombay.

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selves. Though that was the version put on the matter by the Company, it was open to a totally different construction. True, the wind of extraordinary honour had puffed up some of the Judges appointed by royal commission, but it was not their haughtiness so much as their sturdy independence that irritated the men on the spot. The Court of Directors knew that those who had been sent out to India as Judges had taken with them the traditional independence of English courts, and would on no account tolerate the arbitrary acts of the Company's servants. To a man like Sir Josiah Child, who had the audacity to characterise the laws of England as "an heap of nonsense," the conduct of the Judges must have been galling. The Directors had, therefore, used their influence with the Crown, when the Mayor's Court was established, to have no lawyers on that tribunal. But we are going beyond the scope of the present volume; let us return to the Charter of 1687. It established not only a municipality, but also a Mayor's Court at Madras. The municipal corporation was to be constituted on the approved English type, and was to consist of a mayor, twelve aldermen, and sixty or more burgesses. With the powers of the municipality, however, we have nothing to do; let us rather describe the constitution of the Mayor's Court. It was to be a court of record, with power to try civil and criminal cases, and the Mayor and three of the aldermen were created justices of the peace. There was to be an appeal in civil and criminal cases from the Mayor's Court to "our supreme court of judicature, commonly called our Court of Admiralty."*

"There is to be a recorder," continues the charter, the provisions of which have been ably summarized by Sir Courtenay Ilbert, "who must be a discreet person, skilful in the laws and constitutions of the place, and who is to assist the Mayor in trying, judging and sentencing causes of any considerable value or intricacy. And there is to be a town clerk and clerk of the peace, an able and discreet person, who must always be an Englishman born, but well skilled in the language of East India, and who is to be esteemed a notary public."†

* Although this Court was established by the Charter of 1683 there was no Judge-Advocate available for Madras until 1686, when Sir John Biggs, the Recorder of Portsmouth, was appointed to fill the post. Till then the President of the Madras Council acted as Judge-Advocate, but this expedient proved so unsatisfactory that the old Court of Judicature was revived until the arrival of the Judge from England.

† Ilbert's *Government of India*, p. 24.

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The charter also provided for the ornamentation of the Mayor and Aldermen of Madras, which shows how much this prosaic age of ours lacks in picturesqueness. This passage is so interesting that it will bear quotation in full:

"For the greater solemnity and to attract respect and reverence from the common people, the Mayor is to 'always have carried before him, when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length, and the Mayor and Aldermen may always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country.' The burgesses are, on these occasions, to wear white 'pelong' or other silk gowns. Moreover, the Mayor and Aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols* borne over them when they walk or ride abroad on these necessary occasions within the limits of the said corporation; when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and Aldermen of London, having their horses decently furnished with saddles, bridles and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St. George.'" †

It is permissible to surmise that these rules of ornamentation, observed in municipal affairs, were applicable to judicial officers also. This description irresistibly reminds one of the picturesque, almost gorgeous, costume of the serjeant-at-law when the Order of the Coif flourished in all its glory. Alas! the Judges to-day no longer wear a "pelong," much less have they any "rundelloes and kattysols" borne over their heads. They walk, or ride, or drive just like other men.

The Revolution of 1688 dealt a severe blow to the powers and prestige of the Company and strengthened the hands of its rivals. The latter had formed themselves into what was then known as the New Company. Of the rivalries and wranglings of these two Companies we shall speak in the next chapter. Suffice it to say here that the condition of the Old Company had become so precarious that it required all the ingenuity and resourcefulness of its astute Chairman, Sir Josiah Child, to keep it going. The question was now raised in all seriousness and discussed with some warmth whether the Crown could grant

* Umbrellas and parasols. † Ilbert's *Government of India*, p. 24.

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a monopoly of trade to a private company without the authority of Parliament. It was argued at some length before the Privy Council in the famous case of *The East India Company* v. *Sandys*. The decision in their favour gave the Company a new lease of life. By means of lavish bribery, in which device Sir Josiah Child is said to have been a pastmaster, they even managed to extort another charter. The Charter of 5 William and Mary, dated October 7, 1693, confirms the former charters, and in so doing expressly grants and confirms to the London Company all ports, islands, plantations, territories, &c., &c., manors, lordships, &c., houses, lands, tenements, hereditaments, &c., chattels real and personal, debts, &c., jurisdictions, &c., to which the Company were entitled under their former charters, and a later clause of this charter directs that "all the manors, lands, tenements, &c., chattels real, chattels personal and other the premises" thereby granted and confirmed, should be subject to the Company's debts.* But even this temporary success of the Old Company made its rivals work for its ruin with renewed vigour. In spite of the decision in the above-mentioned case, the controversy was reopened as to the constitutional right of the Crown to grant to any person or body of persons an exclusive privilege of trading to any part of the world. For some years the Old and the New Companies fought for dear life, and the history of this period reflects no credit on either the good sense or motives of the antagonists. By the Charter of 1698 the New or the English Company was empowered, like the Old Company, to make bye-laws and ordinances, to appoint governors with power to raise and train military forces, and to establish Courts of Judicature. This naturally made matters worse, for it was like trying to put two swords in one scabbard. At last a coalition was effected through the intervention of Lord Godolphin, and the two rival Companies were united. By what was known as the Indenture Quinquepartite of July 22, 1702, the London Company "granted, bargained, sold, assigned, and set over unto the English Company, the ports and islands of Bombay and St. Helena, with all the rights, &c., appurtenances, &c., prerogatives, royalties, &c., and hereditaments whatsoever" of the London Company in the same islands, or either of them, and also (*inter multa alia*) the factories at Surat, Swally, and

* 4, Bombay High Court Reports, p. 53.

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Broach, and the factories of Amdavad, Agra, and Lucknow, the forts of Carwar, Tellichery, and Anjengo, and the factory of Calicut." * Although the two Companies were temporarily united, it was provided that the Old Company were to surrender their Charters at the end of seven years and the New, or English, Company were to continue their trade in accordance with the provisions of the Charter of 1698 and change their name into that of "The United Company of Merchants of England trading to the East Indies." This coalition, however, proved to be purely formal, for old sores were not healed, and the two Companies continued to look askance at each other. The famous award of Godolphin in 1708 at last closed this period of tension and senseless rivalry.

There are a few matters of minor importance which are worth noticing in a chapter dealing with the early administration of justice in Bombay. For instance, it would be interesting to inquire what measures were adopted to ensure justice to the non-European residents of the island. Aungier was dead, but the Panchayat, or rather the noble spirit which inspired the greatest of our early Governors to bring this essentially *native* tribunal into being, was alive. Campbell cites the instance of a commission, dated May 30, 1694, to one Kaji Ibrahim, who was appointed Chief Judge of the Moors or Mahommedans. The commission was couched in the following terms:

"The Right Honourable Sir John Gayer, Kt., General of all India, by virtue of the authority given to me by the commission I bear from the Right Honourable Society of Merchants trading to the East Indies, do constitute and appoint you Kaji Ibrahim to be Chief Judge and decider of all difference that may happen in your caste—the Moors—on the island of Bombay, willing and commanding all your said caste to obey you in the said station according to the commission given you. Sealed with the Right Honourable Company's seal and given under my hand in Bombay Castle the 30th May, 1694." †

Let us now see how criminals were dealt with and what steps were taken to maintain peace and good government in the town and island of Bombay. As has been already observed, the last quarter of the seventeenth century and the early years of the

* 4, Bombay High Court Reports, p. 54.

† Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 7.

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eighteenth were characterised by internal dissensions and external disorders. Drunkenness and other vices were rampant, and the state of society, both European and native, was corrupt and demoralised to a degree. It reflected the state of government at the time, which was extremely loose and disorganised. Bombay was then the Alsatia of thieves and vagabonds. Some measures were taken to restore order, but the remedies proved too mild to eradicate the deep-seated evils. For instance, a system of night patrols was introduced in Bombay about 1686. The Deputy-Governor forwarded the following instructions to Mr. John Wyat for the purpose:

"You are hereby required to repair to Suri [Siwri], taking with you two topasses, and receive the charge of the new guard-house, suffering no soldiers or others that you suspect to be run away to go off the island. You are likewise to take care that no cattle, corn or other provisions be carried off the island, but may suffer any sort of provisions or cattle to be brought on the island. If you find any one carrying letters off the island, stop them and send them to me, and be sure you search all. Suffer poor people to come and inhabit on the island; and call the militia to watch with you every night sparing the Padre of Parel's servants. You are to apply yourself to the store-keeper for three spare muskets, bandoleers* and swords together with what powder, shot, match and flints you shall have occasion of." †

Eight years after, additional instructions were issued regarding night patrols, this time to a native Subhedar. On September 13, 1694, Sir John Gayer, the then Governor of Bombay, issued the following order to one Jansanay (Janu Sinay?), Subhedar of Warli:

"Being informed that certain ill people on this island go about in the night to the number of ten or twelve or more designing some mischief or disturbance to the inhabitants, these are to enorder you to go the rounds every night with twenty men at all places which you think most suitable to intercept such persons. If you meet any of them, these are to empower you to bring them perforce or otherwise to this Castle." ‡

The same order was repeated to the following Subhedars: Ramaji Audat at Mahim, Raji Karga at Sion, and Bodji Patan at Siwri. On the same subject and on that very day Sir John Gayer issued the following order to Lieutenant James Hanmer:

* Leather bags for firearms.

† Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 8.

‡ *Ibid.* p. 9.

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"Whereas I am informed that on this island sundry base people go about work in company in the night, designing ill to some of the inhabitants, I have ordered the Subhedars belonging to Mahim, Warli, Suri [Siwri] and Sion, to go out every night with twenty men to surprise and commit such persons. Therefore these are to enorder you not to molest the Subhedars in the performance of their duty. If any of your rounds meets with any such persons or any one else that appears suspicious, commit them, and at a convenient time send them to me."

An order was issued in 1676 by Gerald Aungier with regard to the punishment of thieves. In a letter from the Surat Council to Bombay, dated February 8, 1675–76, there occurs the following passage:

"Wee approve what you have done touching ye thieves condemned, but hereafter wee have thought good to make ye standing ord^r^ that whatever thieves are condemned in Court shall be kept in chaines and at constant worke in Bombay till they can be transported to St. Helena, and if they be slaves and doe belong to any proprietour on ye Island, the Company shall allow y^m^ 30 Seraphins p. head; and y^s^ wee doe require you to observe as a standing ord^r^ amongst you."*

We have observed that Englishmen accused of grave offences were sent to their own country for trial. This was not a matter of choice, but the President and Council were enjoined to do so. There was a special clause in one of the early charters which required this procedure to be followed. And the authorities in India were not unwilling to take advantage of it: on the contrary, they used to shield themselves behind this proviso whenever an Englishman was charged with the commission of some grave offence. For it could not but have been distasteful to them to sit in judgment over one of their own countrymen. But they resorted to this procedure so frequently and on such flimsy pretexts that the Court of Directors were obliged to revise their orders. Hence we find them writing to the Surat Council on May 6, 1685, as follows:

"Robert Johnson, sent home a prisoner, is but a trouble to us. For the future send no such malefactors home. Punish them according to their demerits in India, where you have despotical powers as well as martial law and the living witnesses to justify any charge. Our courts at law love not to be troubled with such remote causes, nor can admit

* Forrest's *Selections*, i. p. 82.

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for evidence in criminal causes, any written attestation, affidavits or certificates, nor any other testimony than *vivâ voce*."*

As regards punishment in general and its undue severity we shall have occasion to speak elsewhere. Suffice it here to note the following standing order issued by the Court of Directors on March 24, 1721:

"All corporal punishments and fines should be settled in Council, except such reasonable punishments as the officers inflict on the military and marine, and the sentences of the court of justice. These last may be tolerated on appeal to the President and Council."†

There now remains to notice the creation of a Coroner and Provost Marshal for the town and island of Bombay. The former post was apparently created in 1701, and the order authorising the appointment of the first Coroner of Bombay runs as follows:

"Whereas wee have been credibly informed of your ability, and putting and reposeing confidence to your integrity, wee doe hereby constitute and appoynt you, Christopher Boone, to be Coroner of this Island Bombay, requireing you att all times to be in a readiness to execute the office when you shall be thereunto called, hereby empowering you to sumon a Jury of ye next inhabitants to make inquest of ye death of any person or persons that shall come to their deaths by any unnaturall or extraordinary means whatsoever, and that you take no more for the execution of your office than 13s. and 4d. for seeing on ye corpses of any one person, and that ye same summe be levied of the murderers estate if it may be found, but if not, that there then be an assessment made by the Chamber of ye cast that the defunct is of for the said summe of thirteen shillings and four pence and no more, and wee doe hereby further require you as you will answer the contrary att your perill, that you be not of councill wth any person whatsoever in hideing the murther of any person, nor that you neither directly nor indirectly take any bribe of any person whatsoever to mittigate or lessen any offence: but that you proceed in your said office wth integrity and honesty; as in ye sight of God Almighty, who will certainely require innocent blood att your hands if you conceale the same. Given under our hands and sealed wth the Bt. Honble Comp^as^ seale, this 13th day of June, Anno Domini 1701.

"JOHN BURNISTON.
"WM. AISLABIE.
"BENJ^A.^ STACEY."‡

* Forrest's *Selections*, i. p. 7. † *Ibid.* p. 7. ‡ *Ibid.* p. 167.

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The post of the Provost Marshal appears to have been created two months before the Coroner was appointed. There was a separate order issued for it, which runs as follows:

"The Worshll Jnº Burniston, Deptv Govt of his Majestyes Fort and Island, Bombay, and Councill for Affrs of the Rt. Honble Governr and Company of Merchants of London trading to the East Indies.

"By virtue of a power given us from His Excy Sr. Jnº Gayer, Knt General of India, whose authority is granted him by commission from yº Rt. H. Govr and Compª of Merchants of London tradeing to yº Et Indies, by virtue of his Majestys and his Royall predecessors Royall charters and Letters Patents, as likewise by a late act of Parliament granted said Compª, wee do constitute and appoint yº Edwd Simond to be Provost Marshall of his Majestys Garrison and Island, Bbay, hereby given yº full power and authority to execute yº ffree exercise of yor said office, according to the tenour of your instructions herewth given yº, commandª you to fulfil the same to all intents and purposes, willing and enjoyning all inferior officers and souldiers of the said Garrison to obey and assist yº in and about yº p.formance and execution of your said office, being thereunto required. Yº are likewise to observe and follow all such ordrs and directions as from time to time you shall receive from us, or in our absence from whomsoever shall be appointed. Sealed wth yº Rt H. C'ª Seals, and given under our hands in Bombay Castle the Eleventh day of Aprill, one thousand seven hundred and one.

"Jo. Burniston.
"Wm. Aislabie.
"Benja. Stacey." *

Certain instructions were issued to Provost Marshal Edward Simond, which it may not be out of place to notice below:

"Instructions for Edwd Simond, Marshall.

"No officer or souldier shall presume to hinder the Provost Marshall or servt in yº execution of their office upon paine of death, or such other punishmts as a Court Marshall shall think fitt, and all Capll Officers and souldiers shall doe their utmost to apprehend and bring to punishment all offenders; and shall assist the offics of his Majestys army or fforces therein especially if the Provost Marshall or his officer require the assistª of any officer or souldr in apprehending pson declaring to ym yt it is for a capital crime, and if party escapes for want of aid and assistª ye p.ty or p.tys refuseing to aid, and assist, shall suffer such punishment as a Court Marshall shall inflict.

"2ndly. If any officer or souldr who shall presume to draw his sword in any place of judicature while yº Court is sittg shall suffer such punishmt as shall be inflicted on him by a Court Marshall, and the Provost

* Forrest's *Selections*, i. p. 168.

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Marshall of his Majesty's Army is hereby impowered and directed by his owne authority to apprehend such offenders.

"3rdly. If any souldiers being committed for any offence shall break prison, the said Provost Marshall shall by his owne authority apprehend him, and the offend^{r} shall suffer death.

"4thly. No Provost Marshall shall refuse to receive or keep a prisoner committed to his charge, by authority or shall dismiss him w^{t}hout order upon paine of such punish^{mt} as a Court Marshall shall thinke fitt; and if ye offence for which ye prisoner was apprehended deserved death, ye Provost Marshall failing to receive and keep him shall be liable to the same punish^{mt}.

"5thly. If any person be committed by ye Provost Marshalls owne authority wthout other command, he shall acquaint ye chief officer wth the cause wthin 24 hours, and the Provost Marshall shall y^{re}upon dismiss him unless he have orders to the contrary."*

It is superfluous to add that the office of the Provost Marshal was no sinecure in those days. Indeed, as we have seen, death was the penalty he had to pay if he allowed a prisoner charged with a capital offence to escape.

* Forrest's *Selections*, i. p. 168.

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CHAPTER VI

THE DECADENCE OF BOMBAY AND ITS CAUSES

(1677–1726)

IN this chapter we propose to inquire into some of the causes which led to the decadence of Bombay at the end of the seventeenth century and in the beginning of the eighteenth. In the course of this inquiry we shall try to confine ourselves to the elucidation of those causes only which, directly or indirectly, influenced the administration of justice, and eventually compelled the authorities to close the doors of the Courts of Judicature in Bombay. Extremely demoralised must have been the community which could exist without even the semblance of peace and order for more than a decade. Dissensions, disorders, and disease at home contributed largely to this deplorable state of affairs; hostilities abroad and corruption at the centre of authority—in the East India Company itself—aggravated the situation. The peaceful and orderly administration of Bombay under Gerald Aungier, and the reign of terror which prevailed when Sir John Child was its Governor, present a striking contrast. The one established Courts of Judicature, or, as Ovington would have it, unveiled the Face of Justice; the other drew the veil over it again. The former encouraged people to settle down in Bombay; the latter seemed to drive them out. In the whole range of the history of this Imperial possession of England there are no other two men who differ in their nature and in their principles of action so much as Aungier and Child. Aungier has been generally acknowledged the best of our early Governors: Child was, according to some, one of the worst. We have devoted some space to recording the principal events of

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Aungier's wise and just administration; by way of contrast, we shall say a few words about Sir John Child and the defects of his administration, political as well as moral.

It is difficult to give a true estimate of Child's character as the accounts vary not a little. The early historians are divided in their opinion of this man, his work and worth, and even later authorities are by no means unanimous. Bruce, the Company's annalist, writes of him in terms of the highest praise. According to him, "the precaution and public principles on which Sir John Child acted under critical circumstances discover a high sense of duty and a provident concern for the interests of the Company." In another place he describes Child as having been, for many years, "by his firmness and integrity, the real support of the Company's interests in India" and "alone capable of extricating them from the difficulties in which they were involved." On the other hand, Captain Hamilton describes him in anything but flattering terms.

"The Governors," he observes, "proved tolerably good, till 1682, when Sir John Child spoilt it. The India Company knowing how to make use of King Charles's necessities, made him some presents of money, and he, in grateful acknowledgments, granted them power to rob their fellow-subjects in India; but they used that power to their own destruction, for Mr. Child's pride and oppressions grew so intolerable, that even the gentlemen in the Company's service had not the free exercise of trade, and much less private merchants. And he, trampling on the established laws of England, by advice of his namesake* who governed the Company in Europe, by imprisoning and murdering their fellow-subjects, grew hateful to all." †

Hamilton had not one good word to say of Child. In him he found almost all the vices that make a man odious—corruption, impetuosity, haughtiness, and vindictiveness. He even accuses Child of embezzlement of the funds that were collected for the pious object of establishing a church in Bombay.‡ When, in 1684, he was made Captain-General and Admiral of

* Sir Josiah Child.

† *A New Account of the East Indies*, i. p. 189.

‡ As regards this, Douglas adds the following footnote at p. 243 of his second volume: "The charge of the misappropriation by Sir John Child of the Cathedral funds, £5,000, it is only fair to add, rests on the unsupported evidence alone of Alexander Hamilton. But, as far as we know, it has never been denied."

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the Company's sea and land forces and honoured with a baronetcy, the dignity, says Hamilton, "puffed him up so much that he contemned all laws, human and divine." By the side of this unsparing condemnation, Bruce's praise reads like rank flattery. It is difficult to decide which of these two contradictory verdicts to accept. Hamilton's testimony, it should be borne in mind, is neither accurate nor impartial. He was a man of strong likes and dislikes, a man between whom and the East India Company there was no love lost. Being an interloper himself, he hated the Company, its principles and policy, and the man he hated most of all was Child. On the other hand, Bruce was the accredited historian of the Company. Though an annalist of its affairs, he may, in some respects, be regarded as its apologist. The truth probably lies somewhere between these two verdicts, and on a careful study of the subject it will be found that Child's character was neither so black as portrayed by Hamilton, nor so fair as painted by Bruce. Such at least seems to be the opinion held by two of the best known modern historians, Douglas and Anderson. Douglas does not attempt even to outline the career of Sir John Child, much less does he give us an estimate of his character and work as a public man. Anderson, on the other hand, records an estimate of him so clever in its originality and bold in expression, that we are tempted to quote it here. He attributes most of Child's errors to his unbounded zeal in promoting the interests of the Company he served so long with a singleness of purpose and provident concern which, on one occasion, earned him a thousand guineas and the encomium of his masters.

"We do not see," says Anderson, "any ground for accusing Sir John Child of that selfishness and peculation in which many of the Company's servants indulged to their lasting disgrace. Not that he neglected his own interests, only he identified them with the Company's. He was a deceiver and oppressor for their sakes. His system of administration, as well as that of his brother, the Chairman, was essentially dishonest." *

We shall let our readers decide whether this opinion can be regarded as complimentary or otherwise.

* *The English in Western India*, p. 110.

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That Child's was in some respects a remarkable personality needs no proof: that he was a man of resource and some administrative capacity, nobody who is acquainted with the history of the period will deny. But he had faults, and some of them were very serious faults indeed. He was unscrupulous in his dealings, haughty in manner, and vindictive by nature. There is a story told of his vindictiveness which gained currency not only in Hamilton's time, but has been repeated by so impartial a historian as Anderson, and has been woven into the authoritative sketch of Sir John Child's career in the *Biographical Dictionary*. During his administration, the military broke out in open revolt under the banner of Captain Keigwin. When the mutiny was suppressed and the ringleaders were granted pardon, there was one man among them, Captain Thorburn, who fell a victim to Child's displeasure. By some means he managed to get Thorburn imprisoned for debt, and gave strict orders not to let anybody visit the unfortunate man.

"His own wife," says Hamilton, "was not permitted to visit him, which hard usage brought him into a violent fever, that soon put an end to his life. About two days before he died the gaoler acquainted his lady of his danger, and she, with two small children, went to the General, and, on their knees, begged that a doctor might be permitted to visit her husband, but he was inexorable and would allow no such favour, only granted her leave to be in prison with him till he died, and she stayed but one day and a part of a night till he expired." *

One stands aghast at the cold-blooded conduct of Child towards this unfortunate woman, and would fain believe that this story is an invention. And yet we have not heard the worst of it. For Child is said to have carried his revenge even beyond the grave. When the widow returned to her residence, she found the doors closed against her, her children and slaves having been turned out. Even her own sisters dared not help her, except by stealth, lest they should incur Child's displeasure. We must let Hamilton conclude this wretched story.

"The poor lady had both beauty and discretion enough to recommend her to the virtuous part of mankind; but none of the gentlemen that wished her well durst make addresses to her; only one, who had the

* *A New Account of the East Indies*, i. p. 192.

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command of a ship in the Indian Merchants service, as he had no dependance on the General, nor his masters in England, thought he could not well come within the reach of their persecution; so he courted her, and married her, but that was thought a capital crime, and the General acquainted his Indian owners that without they discharged him their service, they should also find the weight of his displeasure; and accordingly, to avoid contests with his Excellency, he was discharged. But grief put an end to his troubles, for he died within a year of his marriage."

One fails to understand why Child showed his hatred of Thorburn to such an extent. This is by no means a solitary instance of the insatiable vindictiveness of our first Governor-General, as Child was sometimes wrongly styled.* The way in which he persecuted two members of the Surat Council, Messrs. Petit and Boucher (Bourchier), is described at length by Hamilton, but we have no space to give even a brief outline of that painful episode. Suffice it to note that one of them, Mr. Petit, died of grief, thanks mainly to Child's inhuman treatment. And such was Child's inhumanity, that, while referring to Petit's death, he wrote to the Governor of Surat that Petit "had gone to the devil." It is not difficult, therefore, to picture to ourselves the way in which this irresponsible and ungracious man must have administered justice in Bombay and at Surat. We have seen how he baffled Dr. St. John and appointed a man of his own creation as second Judge in Bombay. Child alone could have made the choice of John Vaux for that office. He evidently shared the mean opinion of the laws of England to which, as noted above, his brother gave expression in a letter to Vaux. Hamilton says he contemned all laws, human and divine. Looking to the character of the man and his ante-

* Child has been indiscriminately called "Governor" and "General," though in the despatches of the Court of Directors he was usually designated "our General." Bruce seems to be responsible for the error which has crept into several books of history where he is spoken of as Governor-General. For while referring to his appointment in 1686, which invested him with authority over the other Presidencies as well as Bombay, Bruce observes: "With this object, the Court, with the approbation of the King, constituted Sir John Child their President or General at Surat, to be what in modern times has been termed the Governor-General of the countries within their limits." It need hardly be pointed out that the official designation of "Governor-General" was not bestowed on any Indian Governor until the time of Warren Hastings by the Regulation Act of 1773.

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cedents, it does not seem improbable that, in making this observation, Hamilton was stating no more than the fact, in proof of which he even cites an instance of a trial in which Child sat as judge. It is so remarkable and so thoroughly characteristic of the man that we must make room for it here.

"As the *Phœnix* was on her way for India," says Hamilton, "she called at the island of Johanna, and there found an English ship, called the *Bristol*, stopping some leaks in her bottom. Captain Tyrrel, by a dispensing power from the King of England, seized her and designed to have carried her to Bombay, in company of a small vessel that he had seized on the coast of Madagascar. The *Bristol* sunk the third day after they put to sea, but the other came safe. The *Bristol's* men were looked on as pirates, and one Mr. Mews, a supercargo, was arraigned before the General's Tribunal, where he [the latter] himself sat [as] Lord Chief Justice, and, after his usual manner of bestowing opprobrious names, he condemned Mr. Mews to lose all that he had in the world, and 1,000 pounds beside, and to lie in prison, at his own charges, till the fine was paid; but Mr. Vaux, who was Judge of the Island in petty affairs, showed him the weakness of his sentence, and persuaded him to set the poor man on liberty and order him a passage for England."*

The only obvious comment to make on the above is that, if even Mr. Justice Vaux found it impossible to uphold the sentence of the General, then we may be sure that, on that memorable occasion, "Lord Chief Justice" Child must have surpassed himself on the bench!

Let us now describe an event which must have shaken the very foundations of Bombay and paralysed the authorities, "parvis componere magna," as did the Mutiny of 1857. It gives us some idea of the disorders which overtook the island at the time, and throws light on the character of the then Governor, Sir John Child. It is known in history as "Keigwin's Revolt," and although no monograph has been written on the subject, not even by Douglas, there can be no doubt that it forms one of the most curious episodes in the interesting annals of early Bombay. It was a military rising which created a good deal of commotion at the time without any shedding of blood on either side. The explanation of this strange phenomenon lies in the fact that the authorities were so completely cowed down by the mutineers, who, on their part, conducted themselves in

* *A New Account of the East Indies*, i. p. 194.

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such a strictly constitutional manner, that Government neither dared nor deemed it necessary to exercise the punitive powers vested in them by law, and wisely avoided both friction and force. Not a little credit is due to the moderation and firmness of the principal ringleader, Captain Keigwin, for the harmlessness of this rebellion. Keigwin had made his mark as a remarkably dashing soldier years ago, when he was at St. Helena, where, in 1673, his perilous ascent of certain inaccessible rocks won him the admiration of all and secured for him the governorship of that island. Next year the East India Company sent him out to Bombay, appointing him commandant of the garrison and of the Company's forces by land and sea, including a troop of horse, some three hundred foot, and a small flotilla of armed vessels. Even at that early date the state of the army in Bombay was far from satisfactory. Measures of retrenchment were enjoined by the Court of Directors without due regard to the requirements of the island, and a spirit of misplaced economy and misdirected zeal to show a large revenue with the least possible expenditure characterised many of the orders and instructions issued by the authorities in India at the time. Moreover, the state of martial law in Bombay left something to be desired. An officer was allowed to combine civil and military duties. The principal authority was vested in civilians, though promises of promotion, with seats in Council, were held out to the military if they deserved well of the Company. In 1676 the Court ordered that non-commissioned officers and privates should be punished with death for neglect or breach of duty, but that commissioned officers should only be reduced and deprived of rank. This invidious and unwise distinction added fuel to the fire. Though not too well paid, repeated efforts were also made to cut down the pay of the army as much as possible.

"Captains were expected," says Anderson, "to be satisfied with Lieutenants' allowances, Lieutenants' with Ensigns, and a surplus which had been actually received by them before the reforms were made, and to which they considered they had a just claim, was ordered to be refunded."

In 1674 the authorities received a most solemn warning that the patience of the army was exhausted. For in that year a

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party of soldiers broke out into open revolt, as the Court of Directors refused to give them a month's pay and allow them a free discharge, which they were promised after three years' service. The mutiny was quelled on the soldiers getting the concessions they asked for. On that occasion, a military officer high in command, by name Shaxton, was suspected of having abetted the revolt, and was accused of remissness in checking the insubordination of his men. He was obliged to give up his sword, and was placed in confinement.

"A Court of Judicature," says Anderson, "was then formed for his trial, in which a pompous attorney impeached him and compared him to Catiline. But the soldier defended himself with ability, and the Court decided that they could do nothing but refer his case to the Court of Directors. He was therefore sent to England, where he died at the termination of his voyage."*

The authorities, however, took no hint: their orders for retrenchment and economy became more and more stringent, and they seemed to delight in reducing the pay of the soldier. About this time, as it happened, the Mahrattas had also grown troublesome. As commandant of the forces in Bombay, Keigwin seems to have insisted on the necessity of taking energetic measures to restrain their hostile attitude—measures the wisdom of which he justified by gaining a victory over the enemy in 1679, but which the Court of Directors condemned in strong terms. They ordered that the military establishment in Bombay should be reduced to two lieutenants, two ensigns, four sergeants, four corporals, and a hundred and eighty privates; that no batta was to be paid, as before, to the detachment of thirty soldiers at Surat; that the troop of horse was to be disbanded, and Keigwin, the Commandant, dismissed the service. They further reduced the officers' pay and levied a duty on all ships anchoring in the harbour and on all shopkeepers in the town. The authorities were actuated by such incredible meanness that they even directed that only one-half of the native labourers' wages should be paid in money, the other half being paid in rice "to be valued at the Company's price." These measures alienated the sympathy of the natives and drove the soldiers to desperation.

* *The English in Western India*, p. 103.

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All the inflammable materials were ready at hand; it needed but a spark to set the whole ablaze. These vexatious regulations had instilled a spirit of insubordination into the minds of all the troops, from the highest officer to the mere recruit. There is an instance on record of one Captain Carr, who did not hesitate to insult the Deputy-Governor in his Council Chamber. He appeared unsummoned before his Honour to demand an enquiry into his conduct. It was pointed out to him that he had not been sent for, but that, as he had appeared of his own accord, he would be good enough to explain his non-attendance on parade for two mornings. "I had business," curtly replied the gallant Captain. The Deputy-Governor suggested that his business could not have been very urgent, and that it appeared to him that the officer was not anxious to perform his duty. This suggestion of neglect of duty gave Carr the opportunity of indulging in gross abuse, for which purpose he had probably gone to the Council Chamber even without being summoned.

"Upon that," says Anderson, "Carr began to swear 'good, mouth-filling oaths' at his Honor, and when threatened with punishment by him, shook his fist in the Deputy's face. The affair was terminated by the Captain being placed under arrest and confined to his own quarters. Such an example thus set by an officer was, as might be expected, imitated by private soldiers, and at last all fell into such a disorganised state that the Governor could not find a man whom he could venture to make a Sergeant or Corporal."

This state of chaos at last culminated in the revolt headed by Captain Keigwin. On his dismissal, he went to England, probably to urge his cause, and so far succeeded that, in 1681, he returned to India with the rank of Captain-Lieutenant, a post which carried with it a seat in Council, the highest position which any military officer under the Company could then attain. But, for some unaccountable reason, he was deprived of his seat the next year, and his pay and allowances were reduced. Keigwin quietly bore this degradation. Both in their rank and pay the officers were placed on a lower level than they had formerly been, and the militia, as we have seen, was so reduced that not only was efficient discipline impossible, but even the authority of the officers over their men was almost at an end. Discontent gave rise to disobedience, and disobedience to open

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defiance. The civil authorities pretended not to scent any danger in the situation, but they were rudely awakened to the reality of it the next year. Keigwin applied for subsistence money, and after much altercation with the Deputy-Governor was allowed Rs.25 a month, subject to the Court's approval. The Directors, however, were pleased to disapprove of this allowance, and ordered Keigwin to refund what he had received. Keigwin was a man of action, quick and intrepid, and he felt that the time to *act* had come. He managed to proclaim himself Governor, seized and imprisoned Ward, the then Deputy-Governor, and such of the councillors as adhered to him, assembled the troops and militia, annulled the authority of the Company and declared the island to be immediately under the King's protection. He carried out these bold measures with such rapidity and coolness that the authorities had barely time to realise the situation. He appointed officers to the different companies, filled all the important posts with men whom he could trust, and maintained such excellent order and discipline that he may be said to have almost justified the revolt. He also took possession of two of the Company's ships which had on board large sums of money.

"But," observes Anderson, "he appropriated to himself none of the Company's treasure, and only applied for the expenses of Government the ordinary revenues, which he raised by such a judicious imposition of taxes that his system was continued after the revolt was suppressed. In brief, during his enjoyment of power he acted as honestly, wisely, and judiciously as any lawful Governor." *

The first measure adopted by Keigwin was a proclamation requiring the inhabitants to take the oath of allegiance to the King and to renounce their obedience to the Company. Both the troops and the inhabitants readily complied. The next thing he did was to write letters to his Majesty the King and to the Duke of York, explaining that the selfish schemes of Sir Josiah Child in England and of his brother, Sir John Child, the President at Surat, of whom Mr. Ward, the Deputy-Governor of Bombay, was an instrument only, had been the real source of the trouble, and adding that both the garrison and inhabitants were determined to preserve the place in its allegiance till the

* *The English in Western India*, p. 107.

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King's pleasure should be conveyed to them.* In the meanwhile Keigwin supervised the government of Bombay with remarkable success. In his relations with the Native Powers he was equally successful. He even induced Sambhaji, Sivaji's son, to pay compensation for the losses inflicted on the English by the Mahrattas. While Keigwin was thus establishing peace and order in Bombay, Sir John Child was at his wits' end to know how to suppress this unexpected and wide-spread revolt. At first he threatened to meet force by force, but the threat was naturally ridiculed, as all the force was on the side of the mutineers. Then he tried to soothe them by what little power of persuasion he could command, but Keigwin was too shrewd a man to be lured by this bait. At last Child was compelled to send out some commissioners, who, however, met with but little success. Failing in this attempt, he himself came down to Bombay, conferred at length with the ringleaders, and held out promises of pardon and undertook to redress their grievances. But Keigwin and his men had by that time learnt to appreciate the true value of Child's promises.

"This offer was also unavailing," says Campbell, "for the animosity of Captain Keigwin and his adherents was directed against the President and his brother, Sir Josiah Child, to whose influence they ascribed not only the sufferings which had driven them to the measures which they had taken, but all the evils of which they and the greater part of the inhabitants of the island complained." †

Child felt the hopelessness of his task, and his own helplessness to quell the mutiny even more. He had not a sufficiently strong military force to reduce the island to order; so, acting on the principle of discretion being the better part of valour, he quietly returned to Surat, leaving Bombay in the possession of the revolutionaries. In the meanwhile news had reached England of this affair, and it was represented to the King, no doubt by the astute Sir Josiah, that Keigwin was playing Oliver Cromwell in his Majesty's town and island of Bombay, and that he was trying to explain away a public crime by professing to preserve allegiance to the King. The matter was thereupon referred to a Committee of Secrecy, consisting of the Governor,

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 89.

† *Ibid.* p. 90.

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Deputy-Governor, Sir Benjamin Bathurst, Sir Jeremy Sambrook, and Mr. Joseph Herne. The composition of this Committee left no room for doubt that its report would be unfavourable to the mutineers and that the Company and their accredited agents in India would be freed from all blame. The Committee found that the officers and soldiers were well paid, that the President and Governor, so far from showing cruel and oppressive conduct towards the garrison, had on all occasions manifested every indulgence compatible with the duty of rendering the revenues equal to the charges of the establishment; that the revolutionaries were probably instigated and helped by the interlopers; and that the revolt had been encouraged by the Company not having the power (as appeared in the former cases of Sir Edward Winter at Fort St. George, and at Bombay and St. Helena) to seize and bring to trial their servants for disobedience and insubordination. They also incidentally revived the question (contrary to the prerogative of his Majesty) whether a grant from the Crown, without the authority of the Legislature, could give exclusive privileges to the East India Company. The Secret Committee therefore suggested that the rights and powers of the Company might be clearly defined; that a commission might issue under the Great Seal for restoring the island of Bombay to them; that a pardon be offered to the revolutionaries, with the exception of the four ringleaders, Keigwin, Thorburn, Adderton and Fletcher, and lastly, that his Majesty should issue a proclamation ordering all interlopers to leave India under severe penalties. On the strength of these recommendations the King issued a commission whereby he appointed Sir John Child Captain-General and Admiral of the Company's sea and land forces, and Sir Thomas Grantham Vice-Admiral, with orders to proceed to Bombay, where they were to intimate the King's commands to Keigwin and require him to surrender the island. If he and those adhering to him resisted, they were to be proclaimed rebels and traitors and punished as such. But the Committee had, at the same time, urged on the President the necessity of trying every possible expedient to induce the revolutionaries to surrender, and to employ force only on their obstinately refusing to deliver up the place. There is another passage in their letter of instructions which may be cited below, as it forms a landmark in the history of the place.

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"For the better preservation," wrote they, "of the island in obedience to the King and to the Company, the seat of the Company's government should be removed from Surat to Bombay, where the President and Council are to reside, and a force of three English companies should be maintained with such number of native troops and militia as the President might deem it expedient to employ."*

The report of the Secret Committee dealt a severe blow to the aspirations of the mutineers, for although it could not have taken them by surprise, they might have expected some measure of praise from his Majesty for their fidelity towards him, or, at least, a word of commendation for the manner in which Keigwin and his companions had administered the affairs of the island. The arrival of Sir Thomas Grantham in Bombay could not have filled them with consternation, for they were prepared to surrender on promise of pardon and a speedy redress of their grievances. There were some refractory spirits among the mutineers who voted for "war to the death"; but, luckily for them, there was at their head a man who had the greatest respect for law and good government, and who realised the responsibilities of his delicate position. The promptitude and courage shown by Sir Thomas in landing in Bombay without any troops or even attendants considerably allayed the suspicions of the mutineers. He held several conferences with Keigwin, whom he found quite tractable, though some of his companions were at first troublesome. Child sent out three commissioners from Surat to complete the delivery of Bombay from the "Oliver and Protector of the Island" to the East India Company. He must have heaved a sigh of relief at the peaceful termination of an affair which had threatened to undermine the interests of the Company in Western India. On November 19, 1684, Keigwin surrendered the town and island of Bombay to Vice-Admiral Sir Thomas Grantham, who immediately transferred it in the King's name to Dr. St. John, as the King's Judge, and the latter delivered it over to Mr. Zinzan, as the Company's Governor till the arrival of the President. Keigwin was despatched to England with Sir Thomas Grantham, where he arrived in July, 1685. Next year he was appointed captain of the *Reserve* frigate, and the year after we find him in the West Indies—dead. While leading a fierce attack on the

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 93.

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enemy, he fell, at the head of his men. He died a hero's death but a few months after his persecutor, Sir John Child, was laid at rest in Bombay.

If there is one man more than any other who comes out of this bloodless revolt with his character unsullied, it is Richard Keigwin. Though a mutineer in the technical sense of the word, he emerges out of the ordeal with his reputation heightened rather than diminished. It was due to the courage, foresight, and forbearance of the principal ringleader that there was absolutely no bloodshed from first to last, and little beyond empty threats of violence. Summing up the main incidents in this curious little episode, Anderson observes:

"Alarming as it was, and dangerous to the existence of Anglo-Indian power, it forms an episode in our history of which we are not ashamed. Keigwin emerges from the troubled sea of rebellion with a reputation for courage, honour, and administrative capacity. His crime of treason * was in a measure atoned for by his moderation and shining qualities, and found some palliation in the provocation which he received, and which the President—as we infer from his subsequent conduct—must have aggravated." †

Sir George Birdwood is even more enthusiastic in his admiration of Keigwin.

"Whatever Keigwin's fault as an official may have been," he observes, "he was a splendidly brave man . . .; and one's personal sympathies are entirely with him in his quarrel with the Company's officials at Bombay, among whom both Mr. George Bourchier and Mr. John Petit appear to have been disposed to extenuate, if not justify, his misconduct." ‡

Not only did Keigwin prove a splendidly brave man; but he also showed considerable administrative skill during his short-lived government of Bombay. A word of commendation is here due to the Crown and the Company for the clemency they showed in dealing with the ringleaders. We wish we could say the same of the conduct of Sir John Child in the matter; but his persecution of Thorburn, referred to above, precludes our doing so.

* Was it treason? The mutineers did not "levy war against the King."

† *The English in Western India*, p. 106.

‡ *Report on the Old Records of the India Office*, p. 227.

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It is worth mentioning that while surrendering the island of Bombay to Sir Thomas Grantham, Keigwin delivered over all the money he had taken out of the ships he had seized soon after the mutiny had broken out. This speaks volumes for the integrity of the soldier who was supposed to be in league with interlopers; for at a time when chaos reigned supreme, when even Deputy-Governors were not above embezzlement, it would have been quite easy for the leading mutineer to appropriate a part or even the whole of the booty. But Keigwin was above such temptation; he would rather have led a hundred such revolts than touched a base penny. The fabric of the British Empire in India has been raised by men of the character and calibre of Keigwin and Aungier. As a recompense to the officers who had remained faithful to the Company, it was deemed expedient to give commissions to those of them on whose fidelity the Deputy-Governor could depend. But though the fire was extinguished, the embers continued to burn for a long time after. Even in 1685 the allegiance of Bombay to the Crown was represented to be of a rather doubtful character, from the fact that so many officers who had been concerned in the revolt had remained on the establishment, and who, from their having received pardon, were again becoming insolent, and giving rise to apprehensions of another mutiny.* Luckily, however, the contemplated revolt was quelled before it broke out. It was the intention of the Company severely to punish at least some of those who had taken part in Keigwin's revolt. There can be little doubt that this intention was carried into effect, though there is only one instance on record in proof of it. We regret to say that one Mr. Watson, the then Chaplain of Bombay, was found guilty of participating in the rebellion. The Court's orders regarding him were embodied in a letter to the President at Surat, dated January 7, 1685, as follows:

"Let Mr. Watson, that scandalous chaplain at Bombay, have no salary from us from the time of his rebellion, nor any other officers there as near as you can, without incurring a new hazard until you are firmly settled in your government; and let Mr. Watson know he is no more our servant; banish him the island, and let him take care to pay for his own passage home, and provide yourselves of another chaplain for Bombay out of some of our ships if you can meet with any so much

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 96.

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to your satisfaction as you have at Surat in the room of Badham deceased." *

Poor Mr. Watson!

It is but fair to add that serious and unforeseen difficulties contributed to the failure of Child's administration of Bombay as much as his own shortcomings. He was called upon to assume the government of Bombay at a time when the internal affairs of the town were in a chaotic condition, and when the air was thick with rumours of an impending rebellion from within and threatened attacks from without. The increasing depredations of interlopers † added to Child's difficulties. As has already been noticed, ever since the Company secured the much-coveted privilege of exclusive trade to the East Indies, adventurers had come out from all parts of the world to participate, by fair means or foul, in a trade which brought so much profit to the Company and a welcome accession of strength to the Crown. It was but natural, therefore, that the Directors should look on them with peculiar jealousy, and did all they could to exterminate them. But their best efforts proved of little avail. The number of interlopers increased by leaps and bounds, till at the end of the seventeenth century they became so powerful and reckless that they threatened to form themselves into a rival company and imperil the interests of the monopolists. The East India Company were alive to this danger, and it was with the view of checking it that they had induced Queen Elizabeth, some years ago, to give them the liberty of granting licences to traders, all unauthorised traders being made liable to forfeiture of their goods, ships and tackle, and to imprisonment and such other punishment as might seem meet and convenient. Almost from the date of the establishment of the factory at Surat the interlopers were persecuted with virulent hostility, and when Charles II. granted the Company a new charter, one of its provisions gave them power to seize all such intruders and send them in custody to England. This hostility was never more virulent than during the administration

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 96.

† The term "interloper" was rather loosely employed in denoting every person who ventured to approach the shores of India without being a servant of the Company or without having a licence to trade to the East Indies.

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of Sir John Child. He believed in no half-measures; he was determined to eradicate the evil, root and branch. He did not attempt to mend the ways of interlopers; he tried to put an end to them summarily. Aungier was also stern in his measures against the pirates; but even while waging war on them, he combined mercy with justice, and did not compass their wholesale extermination. In proof of this may be cited a striking passage from a letter the Bombay Council wrote to him in 1677, but which Aungier was not destined to see. While referring to certain pirates they wrote:

"For officers to comand ye souldiers wee have choice sufficient, but there will want an able prudent person to Comand in Chief, who has had experience of India, for ye business will not be to goe down, and make what havock, destruction, and slaughter can be effected, but as y^or^ Hon^r^ &ca. rightly observes, there must be respect had to time to come and ye carrying on a more free and honb^le^ trade in those parts, for ye future. In one hand ye sword and in ye other an olive branch." *

In spite of these restrictions, however, the interlopers seemed to thrive on their nefarious traffic, and were a source of anxiety, and even danger, to the Company. There are instances on record to show that the factors often came into conflict with Moghul officers on account of some mischief caused by interlopers. In 1682 the Directors issued strict injunctions to their agents in India to seize all interlopers and confiscate their ships with the cargoes, one-half of the value being appropriated to the King's use, the other half, according to their charter, to the Company. So strong was the feeling against them that those who escaped the factors' vigilance were successfully tried and punished in the Courts of England. But even these measures proved ineffectual: the evil had outgrown the remedy. On October 3, 1684, the Court wrote to the Surat Council:

"We are very sensible that the interlopers have given you great trouble, and have been a great interruption to all our business, but are fully satisfied that our President and Council are worthy men and have served us faithfully and as well as any men could have done under so many disappointments."

* Forrest's *Selections*, i. p. 132.

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The President and Council were no doubt worthy men, but they were helpless to stem the tide, which was flowing fast. Neither the special provisions under the various charters nor even the rigours of martial or mercantile law deterred the interlopers. Their depredations greatly hampered the progress of the Company. At last it was deemed necessary to establish a special Court of Judicature, presided over by an English judge, "for the suppressing all interloping and interlopers." We have alluded to the efforts made by Dr. St. John to attain the objects of the Charter of 1683, and the small measure of success he was able to achieve. Not that he shirked the duty of sitting in judgment over his own countrymen. On the contrary, with the co-operation of Child, he seems to have exercised the legal powers with which he was vested to the fullest extent. The evil had, however, taken such deep root that even the Admiralty Court failed to eradicate it. Moreover, owing to the spread of liberal ideas in England, the monopolists were fast losing ground. This gave a sort of encouragement to those who ventured to break through the restraint which the hated monopoly imposed on the enterprise of merchants. Child did not fail to notice the baneful influence they exercised, and, with the help of his brother in England, did his utmost to counteract it. During his *régime* the Admiralty Court was given the widest authority, consistent with the provisions of the charter, to put down the evil. No mercy was to be shown, no quarter given.

"Interlopers," says Anderson, "could be seized as pirates, and when convicted, sentence of death was passed upon them. Execution of the sentence was indeed stayed until the King's pleasure could be known, but meanwhile the offender languished in imprisonment, and when at last pardoned by an exercise of the royal prerogative, his property having been already confiscated, he was reduced to beggary. Yet the Directors were still fearful that an appeal to a higher court might gain him redress, and therefore sent out orders that when their Judge-Advocate in India had passed sentence there should be no inquiry into the legality of his proceedings."*

This passage clearly points to the fate that awaited the interloper at the period. It is true that chronic evils call for

* *The English in Western India*, p. 120.

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the exercise of drastic measures, but it was felt even then that the treatment accorded to interlopers was far in excess of their deserts. "This proceeding of the Court," pleads Bruce, in extenuation of the conduct of the Company, "rested upon the opinion of the twelve judges, which was, that the Company had a right to the trade to the East Indies, according to their charter." But, as Mill justly observes, it is a bold statement to make that, because the judges decided that the Company had a right to the trade to the East Indies, "they assumed a right to be judges and executioners of their fellow-subjects in their own cause." Mill was indignant at the cruelty and total disregard of justice which marked their proceedings, and thought it hardly credible if it had been less strongly attested.

"The Company," he observes, with the petulance characteristic of the historian, "seized their opponents, and carried them before their own Admiralty Court—that is, before themselves—to judge and pass sentence in their own cause, and inflict almost any measure of injury which it suited minds inflamed with all the passions of disappointed avarice and ambition to perpetrate. They accused their competitors of piracy, or of any other crime they chose; tried them as they pleased, and sentenced them even to death."*

These are hard words, but who can say they were not, in a large measure, justified? It must in fairness be added, however, that Child's action in putting interlopers in the same category with pirates is not so blameworthy as his detractors would have us believe. It was, in those days, difficult to distinguish interlopers—that is to say, private and honest, though unauthorised, traders—from pirates. Captains of large merchant vessels resorted to robbery on the high seas, pillaged native craft, and often treated the crews with great barbarity.

"The English Government in Bombay," observes Douglas, "had to deal with all kinds of pirates—Somali, Sidi, and Sanganian; but worse than any of these, she had to bring down her right arm on those of her own flesh and blood who desecrated the name and the honour of England on the Indian Ocean."†

* *History of British India*, i. p. 90.

† *Bombay and Western India*, i. p. 119.

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Kidd,* Green, and Evory are the names of some of the men who had terrorised the Indian seas for years. The English pirate was the principal cause of the disastrous war which Child waged against the Great Mogul. Evory was the most notorious rover of his day, and gave much trouble to his countrymen in India. Indeed, he seems to have gained such notoriety for enterprise and daring that the Lord Chief Justice of England offered a reward of £500 for his apprehension and the Company an additional 4,000 rupees. Evory, however, successfully evaded the authorities, though some of his confederates were hanged. Among native pirates Kanhoji Angria was undoubtedly the most famous. English, Dutch, and Portuguese each tried to lay him low, but they all had to acknowledge defeat. Angria was to the native craft what Kidd and Evory were to European vessels. During the first quarter of the eighteenth century he seems to have defied the authorities in and around Bombay, and although he died in 1728, his piratical instincts were transmitted to his descendants, who kept up his reputation till 1755, when Commodore Jones made short work of the race of Angrias.

Such, in short, is the history of interlopers and pirates who prowled about the island of Bombay in the seventeenth and part of the eighteenth century. The brothers Child acted in unison to bring about their ruin. Whatever plan Sir Josiah worked out in England, Sir John matured and carried out in India. But even they, remarkable for their audacity and notorious for their unscrupulous conduct, failed to compass

* Kidd was a very well known pirate, and is immortalised in the following song:

"My name was Captain Kid,
As I sailed, as I sailed.
My name was Captain Kid,
And so wickedly I did,
God's laws I did forbid
As I sailed, as I sailed.

* * * * *

I had the Bible in my hand,
As I sailed, as I sailed.
And I buried it in the sand,
As I sailed."

Washington Irving's *Tales of a Traveller*. See also *The State Trials*.

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the extinction of this class of men. Charters were granted and confirmed, the authority of the Company was widened, punishment was made every year more deterrent and severe, but all to no purpose. On October 27, 1693, the Court of Directors again wrote:

"After a multitude of conflicts with the interlopers and their adherents and all others that have envied or emulated the Company's former prosperity, we have obtained of their present Majesties King William and Queen Mary a charter of confirmation of our present and all our former charters, and are in possession of it, under the Great Seal of England, bearing date the 7th instant."

But neither the confirmation of charters nor the severity of punishment had the desired effect. The evil may be said to have died out naturally, when the Company was deprived of its monopoly and the trade to the East Indies was thrown open to all. But enough of interlopers and interloping. Those who wish to know more about them will be amply repaid by perusing the two quaint volumes of Captain Alexander Hamilton—himself one of the most notable interlopers of his day.

During Child's administration of Bombay, the Court of Directors took it into their heads to launch upon territorial expansion and ignore the authority even of the Moghul Emperor. Far better had it been if they had tried to consolidate what little power they then possessed in India, instead of wasting their energies and resources on an object the fulfilment of which was doubtful in the extreme. Compared to the long-established Moslem Empire, the East India Company was but an upstart of yesterday. It may be that the Moghul dynasty was growing old and feeble, but even so it could command endless resources at a moment's notice and crush English dominion in India without much effort. What induced the Directors to launch upon such an ambitious scheme, it is difficult to say. Sir Josiah Child probably wished to immortalise himself by expanding the territorial limits of the Company over which he ruled supreme, and he certainly gained his object, though the immortality was of a character one would rather not have acquired. His not less ambitious brother in India was evidently puffed up with the power which was vested in him in 1684. He felt himself above

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the routine work of a merchant which then ordinarily devolved on the President. He sneered at the idea of merely noting down the prices of pepper and calicoes, the arrival and departure of ships and cargoes, or such other duties of commercial life. He was made Captain-General and Admiral of the Company's sea and land forces, and as such was determined to maintain the dignity of his high office. In 1685 he was vested with supreme authority over all the Company's possessions in India, with instructions to proceed to Fort St. George, and if necessary to Bengal, "to bring the whole under a regulated administration." This accretion of power must have increased Child's arrogance and ambition. The Revolution of 1688 dealt a severe blow to the forward policy of the brothers Child, but they seem to have recovered from its effects with remarkable agility. Next year the Directors passed the following resolution, probably drafted by Sir Josiah:

"The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty actions may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by his Majesty's royal charter, fit only to trade where nobody of power thinks it their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade." *

The importance of this resolution cannot be exaggerated. "It announces," says Ilbert, "in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and preludes the annexations of the next century." The Directors had got tired of the mission of the mere merchant; they were trying to look far ahead into the future, when they would be reckoned the pioneers of a great movement, when, in fact, an Indian Empire under British dominion would proudly raise its standard and excite the admiration of the world. Ambition would seem to have dictated this policy, though Kaye, the historian of the East India Company, is of a different opinion.

* Ilbert's *Government of India*, p. 25.

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"The drift of this," says he, "is not that the Company had become ambitious, but that the trade had become precarious. It appeared to be a necessity to think of revenue, if they were to maintain their position at all. But the national phase of the question would not have forced itself upon them with this urgency if there had been more hopefulness in the aspects of their commercial life." *

Whether this plan of territorial aggrandisement was ambitious or not, it is certain that the time was not ripe for its execution, as the following events will testify.

On May 2, 1687, the seat of government was ordered to be transferred from Surat to Bombay, and in September of the same year, in order that the government of the Company might assume the rank of an Indian Power, Bombay was elevated to the dignity of a Regency with unlimited sway. This high-sounding title, however, conveyed but little meaning, still less importance. It was a matter merely of outward titles and dignities. In 1689 the Court of Directors determined to constitute Bombay the chief seat of their trade and power, and at the same time to consolidate their position in India on the basis of territorial sovereignty in order to acquire the political status of an independent Power in their relations with the Moghuls and the Mahrathas. It was in pursuance of this policy that Child got himself engaged in hostilities with the Emperor of Delhi, which involved the Company in serious difficulties and resulted in their having had to pay an indemnity of Rs.1,50,000, as we shall presently see. Anderson, it may be noticed, criticises Child's action in terms which lack neither warmth nor courage. If Child had waged this war with the sole object of carrying out the ambitious programme of his masters, we might have attributed his failure to some cause beyond his control. But the facts, as stated by Anderson, put a different complexion on the matter.

"Sir John," he observes, "was really anxious to promote the Company's interests, and as their policy was unprincipled, he was quite ready to make it his. They had become deeply involved in debt. They owed £281,250 to natives of Surat, and it had become inconvenient to discharge even the interest of such a sum. Instead, therefore, of following the old-fashioned way and paying, they were resolved to discover

* *Administration of the East India Company*, p. 78.

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some other means of escaping from their obligation. The two Childs were the men to devise and execute such a plan." *

The above passage throws fresh light on Child's character. One cannot profess to feel sorry at the just retribution which followed this dishonourable attempt to defraud native creditors. The first measure that Child took was to increase the military strength of Bombay, but even in this preliminary step he seems to have blundered. He was by no means a soldier of repute, nor had he the courage of Oxenden or Aungier. He was probably ignorant even of the rudimentary principles of military tactics, and as regards his conduct in actual warfare, we must let Hamilton speak.

"Cowards," he observes with just a tinge of ridicule, "are generally stout when dangers are at a distance, and so was our General, who had never seen a sword drawn in anger, and consequently very ill acquainted with war; and when it came to his door, none was ever so confounded and dejected as he was, as appeared by his conduct in that war that he so foolishly brought on himself and his country." †

Being a weak man, Child did not assume the offensive at once. He proceeded cautiously and bided his time. There were, however, several opportunities to harass the Moghul officers. The latter bitterly complained of the depredations of European interlopers. How did Child redress this grievance? By admitting the truth of the complaint, but alleging that the native authorities were responsible for aiding and abetting them. This was adding insult to injury. Bruce observes that "he had determined to act on this principle," and he seems to have stuck to it throughout the war. In 1687 he wrote out a long Bill of Complaint, comprising thirty-five articles, and addressed it to the Governor of Surat, demanding immediate redress and satis-

* *The English in Western India*, p. 110. Anderson is here borne out by Hamilton, who, in his observations on the affairs of Bombay during Child's administration, says: "And I saw a letter from the Governor of the Company in England, intimating that when they had got as much credit of the Mogul's subjects as they could, then they would pick quarrels with the creditors, and put a general stop to their trade, which was accordingly done" (*A New Account of the East Indies*, i. p. 202).

† *A New Account of the East Indies*, i. p. 219.

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faction.* The Emperor took no notice of it and sent no reply. Child might have made this an excuse for a declaration of hostilities, but he was not yet fully prepared for it. He was determined on war, and his masters at home encouraged him. Indeed, they were so well pleased with the ability and spirit with which their faithful servant had acted that they resolved to present him with a thousand guineas. But Child's war cost the Company much more than that; Hamilton says it cost them above £400,000, "besides the loss of their credit with the Mogul and his subjects, which, to this time, is not quite recovered." The Governor of Surat patiently bore all the indignities offered by the factors at the instigation of their President. But the worm turned at last. On December 26, 1688, the Moghul officers seized and imprisoned two of the factors, Harris and Gladman, ordered all the goods of the Company to be sold, and offered a large reward to any who would take Sir John Child, dead or alive. Child saw his opportunity now. He captured several richly freighted ships belonging to native merchants without even issuing any declaration of war, and ordered that all Moghul vessels should be seized and treated as prizes. At the same time he assured Aurangzib that he had no hostile intention and prayed for the release of the two factors. But the Emperor was not to be deluded by Child's duplicity; he was exasperated in the highest degree and issued instructions to treat the English as enemies. The plight of the factors now became truly pitiable. They craved for immediate relief, "which," they added, "we think our poor dejected spirits can't have more occasion for than at this juncture." They were maltreated in truly Oriental fashion.

"The factors," says Anderson, "were detained in prison, and at times made to gratify the mob by parading the streets with chains suspended from their necks. Although they were afterwards liberated from jail, they were closely confined to their factory until the seventeenth of October, 1691." †

In the meanwhile the General had repaired to Bombay, where

* Hamilton has transcribed these articles from a copy of the complaint he saw at the time. He characterises some of them as unjust, and the others "but weak arguments to help to support his complaints and raise a war."

† *The English in Western India*, p. 114.

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the situation had become critical. It seems that the English had carried away the fleet of Sidi Yacoob, laden with provisions of corn and cloth, and when the latter politely requested Child to give up what by right belonged to him, the Governor sent him an insolent reply, as was his wont. The Sidi thereupon made preparations for a fight and landed at Souree (Siwri) with a force of 20,000 men. The authorities in Bombay were ill-prepared to meet such a formidable foe. Obvious precautions to guard the island against possible hostilities had been neglected; even the fortifications were not strengthened, though the Directors had repeatedly reminded Child of the necessity of doing so. The Sidi found his work fairly light. He seems to have established himself at Mazagaon, which was evacuated by the English with such precipitancy that eight or ten chests of treasure and four chests of arms were left behind. Finding the enemy resolved on hostilities, Child ordered one Captain Pean, no better a soldier than himself, to drive the Sidi away. Pean was asked to achieve the impossible, for the Sidi's army was ten times more powerful than his, and better accustomed to fighting at close quarters. The enemy advanced with all speed,

"which," says Hamilton, "the Captain perceiving, betook himself to his heels, and was the foremost man to the Portuguese church, where he took courage to look behind him to see what was become of his men. . . . He was a fellow," adds our author with a touch of humour, "as well made for running as any I ever saw, and was so much in the General's favour that he had not so much as a reprimand for his cowardice and misbehaviour." *

Like master, like servant.

At Surat the English fared no better. In fact, in almost every engagement they were worsted. Child was now growing apprehensive, and seriously thinking of retracing his steps. His folly and arrogance, combined with his incapacity and rashness, had cost his masters much in men and money. But he had now gone too far to back out without impairing his dignity. "After a few convulsive struggles," says Anderson, "Child's pride received its death-blow; his blustering tones were silenced; his turbulent spirit and trenchant energies crushed." Negotiation was the only course open to him, but he first tried to see if

* *A New Account of the East Indies*, i. p. 224.

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corruption would help him out of the difficulty. Lavish bribes were offered to the Imperial officers at Delhi, but to no purpose. At last Child sent out two envoys to seek for peace. After being subjected to the indignity of having their hands tied behind them, they were brought into the august presence of the Emperor. Aurangzib was at first obdurate and would not listen to their entreaties for peace and the issue of a new firman. At last he yielded, and granted another firman to the Company on February 27, 1689, "in the 33rd year of a most glorious reign." * But he imposed three conditions: (1) That all moneys due from the Company to his subjects should be paid; (2) that recompense should be made for such losses as the Moghuls had sustained in the war; and (3) that the hateful Sir John Child should leave India before the expiration of nine months from the date of the firman. This last condition was naturally the most galling to Child; but he had incurred the disgrace, and, as Douglas observes, his countrymen had to "lick the dust." He was personally responsible, in a large measure, for these most humiliating terms, which had to be accepted. The factors were released from their long confinement and peace was restored.

* It will be interesting to notice the terms of this firman, which is couched in a language which the proud factors were not used to. A translation of it is to be found in Bruce's *Annals* and runs as follows: "All the English having made a most humble submissive petition, that the crimes they have done may be pardoned, and requested another Phirmaund, to make their being forgiven manifest, and sent their Vakkeels to the heavenly palace, the most illustrious in the world, to get the royal favour: and Ettimaund Caun, the Governor of Suratt's petition to the famous Court, equal to the skie, being arrived, that they would present the great King with a fine of 1,50,000 rupees, to his most noble treasury, resembling the sun, and would restore the merchants' goods they had taken away, to the owners of them, and would walk by the ancient customs of the port, and behave themselves no more in such a shameful manner; therefore, his Majesty, according to his favour due to all the people of the world, hath pardoned their faults, mercifully forgiven them, and out of his princely condescension agrees, that the present be put into the treasury of the port, the merchants' goods to be returned, the town flourish, and they follow their trade as in former time, and Mr. Child, who did the disgrace, be turned out and expelled. This order is irreversible."—*The English in Western India*, p. 116.

Referring to the imperious tone of this firman, Anderson says: "The language of the document was more humiliating and contemptuous than any which had been addressed to the English from the first settlement of their factory in India. The Company were treated, not as the subjects of an independent Power, but as criminals, who, having been mercifully pardoned, were again admitted to live in a state of slavery."

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The disastrous effects of the struggle were, however, felt for a number of years, and the Company did not again venture upon territorial aggrandisement without mature reflection. Child did not survive his humiliation long. He had been declared an outlaw by Aurangzib, and he dared not go to Surat again. He died somewhere in Bombay, but nobody knows where his bones lie. Connected with one of the most influential families in England and master of the factory at Surat, as his brother was master of the Company in England, he yet shared the fate of an outlaw of the Government he had insulted and affected to despise.

"Of what avail," asks Douglas, "were Child's influential connections in England? They could not save the splendid reputation which he had built up for himself from being dashed to pieces, could not even raise a block of rude stone to mark the place where lay the President and General of the Indies."*

No stone also marks the spot where Gerald Aungier was laid at rest. But there is this difference between Aungier and Child, that whereas the memory of the former is enshrined in the heart of Bombay and will be cherished long, that of the latter is but a thing of the past.

Child's indiscretion was productive of results which could not have been foreseen. It may be said to have rung the death-knell of the East India Company. England had grown prosperous, and Englishmen wanted their spare capital to be invested in the lucrative trade of the East Indies. But the hated monopoly formed an insurmountable barrier in their way. They had tried several expedients to get over it, but without success. The old Company was very influential still in and out of Parliament, and Sir Josiah Child was a host in himself. The Directors seemed to have endless resources, and what they could not achieve by fair means, they accomplished by foul. The Company had an elastic conscience—and so had the country.† Child's unsuccessful attempt at territorial aggran-

* *Bombay and Western India*, i. p. 11.

† The following sentence from Burnet's *History of His Own Times*, descriptive of manners and morals in England soon after the Revolution, seems apposite: "Upon the whole matter, the whole nation was falling under such

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disement provided their rivals with another weapon of attack, and they used it to the best advantage. They brought charges of corruption and inefficiency against the Company, insisting, at the same time, that it should be deprived of its monopoly, and so far convinced the House of Commons of the justness of their claims that it was solemnly put on record "that it was the right of all Englishmen to trade to the East Indies, or any part of the world, unless prohibited by Act of Parliament." The charge of corruption was pressed so hard that the Commons ordered the books of the Company to be examined. The revelations this inquiry brought to light strengthened the hands of those who urged the abolition of the old and the establishment of a new company. It was then discovered that the East India Company was virtually steeped in corruption.

"It appeared," says Mill, "that it had been the practice, and even habit of the Company, to give bribes to great men; that, previous to the Revolution, their annual expense, under that head, had scarcely ever exceeded £1,200; that since that year it had gradually increased and that in the year 1693 it had amounted to nearly £90,000." *

The Duke of Leeds was charged with having received a bribe of £5,000. He was impeached by the Commons, but the affair was hushed up, as other men, high in rank, were implicated in it. These facts brought the old Company almost to the brink of ruin; but such was its vitality and influence that it survived the shock and dragged on a precarious existence for a few years more, in spite of the establishment of another association. It was contended on its behalf that the infringement of the charters it possessed would be contrary to good faith and justice, that to deprive it of its property would be violating the very foundation on which rested the structure of society, that, in short, "humanity, law, and policy would all be equally violated by infringing the chartered rights of this admirable institution." To this, the new association curtly replied that it was no infringement of good faith or justice to annul, by a legislative act, a charter which was hostile to the interests of the nation. The

a general corruption, both as to morals and principles, and it was so much spread among all sorts of people, that it gave us great apprehension of heavy judgments from Heaven."

* *History of British India*, i. p. 98.

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old Company was allowed to live on sufferance, as it were, till 1698, when a new Company, called the English Company, was established. Parliament, in the plenitude of its wisdom, thought that the establishment of another Company would put an end to a controversy which had given rise to much ill-feeling and misunderstanding. But by allowing two companies to trade to the East Indies, it made matters worse. "In all this very material affair," observes Anderson, "there certainly was a strange jumble of inconsistencies, contradictions, and difficulties, not easily to be accounted for in the conduct of men of judgment." Perhaps the suggestion of the old Company, that these measures of Parliament were rather the result of the power of a particular party than the fruit of legislative wisdom, may account for this anomaly. The Directors wrote as much to their faithful servants in India, whom they filled with hopes of ultimate success.

"Two East India Companies in England," they wrote, "could no more subsist without destroying one the other, than two Kings, at the same time regnant in the same kingdom: that now a civil battle was to be fought between the Old and the New Company; and that two or three years must end this war, as the Old or the New must give way; that, being veterans, if their servants would do their duty, they did not doubt of the victory; that if the world laughed at the pains the two Companies took to ruin each other, they could not help it, as they were on good ground and had a charter." *

The Directors could not have made their intention more clear. They meant to fight, even though the world ridiculed their efforts. Their rivals were also bent upon the same object. This unfortunate feud resulted in a series of acts of mutual recrimination, which reflect no credit on either the old Company or the new.

Let us now turn again to Bombay. On the death of Child in 1690, Bartholomew Harris was appointed President of Surat and Governor of Bombay. Little is known of Harris except that, during the recent hostilities, he was imprisoned by the Governor of Surat, and, as it was contrary to the etiquette of the Imperial Court that any one who had been convicted of a capital offence should, without special permission, be honoured with marks of the Emperor's esteem, he was obliged to send

* Mill's *History of British India*, i. p. 100.

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his Deputy to receive the usual firman on his accession to the presidentship of the Surat factory. Anderson characterises Harris as a man of feeble mind and indolent disposition, so that the active duties of administration were discharged by Samuel Annesley, who himself became President in due time. Hamilton describes Annesley as a cunning and designing fellow who had "malicious wit and avarice enough to embroil both his masters' and the private merchants' affairs in Surat in Harris's time, and on Harris's death, got into the Presidency or rather tyranny." Annesley must have been a peculiarly mean creature. For it is said that he compelled those of his countrymen who, for their courage and skill in navigation, were employed on big native vessels at fairly handsome salaries, to pay him a part of their wages, and that he harassed those who did not comply with his unjust demand. He was dismissed the Company's service in 1700 for breach of trust and fraudulent practices. Yet another name added to the Black List of our early Governors! On the death of Harris in 1695, Sir John Gayer was appointed Governor of Bombay with the revived title of General. Gayer was a good and able man, though he had his faults. His career in India was not strewn with roses, for it was during his administration that the New Company was established and the disgraceful scenes, about to be noticed, were enacted in Bombay and at Surat in the opening years of the eighteenth century. He was severely reprimanded for the singular weakness he showed in allowing himself and his wife to be made prisoners by the Governor of Surat.* There is a story told of him prejudicial to his character, not as Governor of Bombay, but as a private gentleman, from which we learn for the first time that, in those days, for an Englishman to marry without previously obtaining the consent of the Governor constituted an offence against the statute law of Bombay. This restriction shows how varied and even despotic were the powers the head of the Government wielded at the time. It seems that Gayer acted as guardian of a young lady, a daughter of Mr. Ward, the late Deputy-Governor

* Hamilton says he could have avoided that disgrace by force or flight, "but," he adds, "it was generally believed that that was only a piece of policy to get to Surat, in order to employ his money, which he could do much better there than at Bombay." But Hamilton's testimony remains uncorroborated.

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of Bombay, and niece of Sir John Child, who was entitled to a little fortune of her own. The Governor had thought of marrying her to his own son, but to his great annoyance, discovered that she had been united clandestinely to a factor named Solomon Lloyd. He must have had the statute law of Bombay at his finger's-end, for he unmarried the factor and married the girl to his own son. "But,' adds Hamilton, who is responsible for the story, which is endorsed by Anderson,

"the second marriage was attended with ill consequences, for, whilst her husband was at China, one Coleman was ordered to teach her to write good English, but, neglecting those orders, he taught her something else, and was discovered in the practising by a watchful mother-in-law. The schoolmaster was sent, in irons, on board of a ship for England. And the poor husband's head aked as long as he lived."*

Such a fashionable marriage, with its sensational consequences, must have created not a little stir in the European community of Bombay. But this is a digression. Soon after his accession to the *guddi* at Surat, Gayer seems to have had a serious dispute with the Moghul Governor over some pirates who had plundered a ship belonging to one of the principal merchants of the town. These depredations had so incensed the populace that the latter was obliged to put all the English, including the President, in irons. Gayer objected to this procedure, and wrote to the Emperor that the servants of the Company had been made to suffer for the acts of those who, not only did not possess the license of the Company, but who acted in direct violation of the laws of England, and who, if captured, would be liable to capital punishment. The earnest representations of Sir John had the desired effect, but it did not convince the Moors that the servants of the Company were not in league with interlopers. Meanwhile, the new or "English" Company was making preparations to send out a representative to India. The old Company may be said to have indirectly helped in its constitution, for there were several factors who, on dismissal from the service of the old, were willing to serve the new. They were all men more or less of doubtful character—Waite, Pitt, Master, Annesley, Bourchier and others—men who

* *A New Account of the East Indies*, i. p. 238.

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were actuated by a spirit of revengefulness towards their old masters for imaginary wrongs. The new Company was only too glad to accept their services, for their experience and local knowledge, though neither their integrity nor fidelity, would be of the greatest value. In January, 1700, Sir Nicholas Waite, the English Company's President for Surat, arrived off Bombay, and notified to Sir John Gayer his appointment to be the King's Minister and Consul-General for the English nation, and demanded compliance with his orders. Waite was a servant of the old Company, having been their agent at Bantam, but was dismissed. Hamilton's opinion of him is anything but favourable.

"He was a man of very loose morals; and his barefaced injustices and prevarications so irritated the inhabitants and soldiery of Bombay, that they seized him and sent him prisoner for England. Tho' his reign was short, it was very pernicious to his masters as well as to particular merchants under his jurisdiction." *

Apart, therefore, from the indignity offered by the representative of a "society of interlopers," as the new Company was stigmatised by the Directors of the old, Gayer resented the interference of a man whose antecedents were far from honourable. The dignity of knighthood, he thought, could not have blotted out his past record. Failing in his object in Bombay, Waite sailed for Surat. He had probably heard of the strained relations between the factors and the Moghul officers—of the suspicion the latter had long entertained of the connection of the English with interlopers. What could be easier than adding fuel to the fire? On reaching Surat, he notified his Royal Commission of appointment to the President and Council, and required them to strike the St. George's or Company's flag, as he bore the Commission of Vice-Admiral and would allow no other flag to fly than his own. The servants of the old Company refused to carry out his order. Waite, thereupon, appealed to the Moghul Governor. The latter, however, would not side with him, probably because the newcomers were perfect strangers to him; besides, though the servants of the old Company were bad enough, the representatives of the new

* *Ibid.* i. p. 240.

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might prove still worse. Baffled in his design, Waite threatened force, but soon discovered that it was of no avail. Being a man without scruples, he tried to accomplish by artifice and intrigue what he failed to achieve by entreaty and threat. He represented to the Moghul officers that the servants of the old Company were in league with interlopers, and that they had a hand in the piracies which were being committed in and around the Surat seas. He even wrote to the Emperor in the same strain.

"Sir Nicholas Waite," says Bruce, "addressed a letter to the Moghul, accusing the London Company of being sharers and abettors of the piracies, from which his subjects and the trade of his dominions had suffered; or in the Consul's own language, *of being thieves and confederates with the pirates.*" *

Waite also pointed out the fact that the old Company's charter was to terminate in 1702, and hinted that if the native creditors did not keep a sharp look-out, the factors would probably remove all their goods and chattels, leaving no security for the payment of their debts. The Moghul officers took this warning seriously, and lost no time in safeguarding their interests. Under these circumstances, the greatest care and foresight were needed for the old Company to counteract the influence of their rivals. But at that critical moment Gayer adopted a measure which was as ill-timed as it was disastrous in its results. He left the fortifications of Bombay and went to Surat with the object of checkmating Waite. But whilst he was there orders were issued by the Imperial Court to seize him. Forrest cites a passage from a record which had even then almost crumbled to pieces, throwing light on this dramatic incident. From this we learn that the Governor's son

"secured Sr John and his Granaders and then entered ye lodge,† obliged the Lady Gayer out of the bed, carryed her and Mr. Somaster and others to accompany ye Generall to Suratt before y^{e} *Tavistocks* people had notice or could come ashoare to their rescue, and being brought over the river in an open boat, ye lady was putt into a hackery covered with a cloath, and carryed to the Governrs, where wth Sr John and others were confined to

* Bruce's *Annals*, iii. p. 337.

† The English factory at Surat was sometimes styled the Lodge.

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one roome, and some hours after the Governour sent for Presidt Colt, who goeing wth two of his Councell accompanied Sr John in said prizon, wch tryumphant act as its esteemed of the Meer was wrote that night to the Empr to ye noe small dishonour of ye old Compas Generall of India." *

The above extract is made clearer by the following entry in a Consultation held in Surat on January 7, 1701–2:

"This day ye Govr doubled his guards about ye ffactory and debarred us from all manner of correspondence wth Europeans or Natives, and from all necessarys and conveniences of life, because we would not consent to pay Hosson Ammadan three hundred thousand rupees, for wch sume he is willing to quit his unjust claim for wt ye pyrates robbed him and his ffreighters of in ye year 1698." †

So the ostensible cause for seizing Sir John and Lady Gayer and other members of the Surat Council was the refusal on the part of the old Company to pay an exorbitant sum to Hosson Ammadan. But the real cause lay somewhere else. Waite was found to be at the bottom of the mischief. "This was done by an order from Court," wrote the servants of the old Company, "procured by Sir Nicholas Waite, the Hurcurra ‡ of Suratt, and others of that hellish crew." Indeed, Waite himself admitted that Gayer was imprisoned at his instigation, but gave out as his reason that the London Company's servants had spoken treasonably of the King. For twelve weary months § the factors and their Chief were confined within the walls of the Lodge; neither threats nor starvation could compel them to yield to the unreasonable demands of the Imperial Court. It is for this unjust confinement that Gayer has been blamed, for, it was argued, he might have freed himself and his companions by either force or flight. It certainly does not add to Sir John's reputation for bravery or resourcefulness. But there is a feature in it which proves the grit of the factors and does credit to the English name. Early in 1701 Sir John sent a "Roca" to Dianut Caun, the then Governor of Surat, earnestly praying for

* Forrest's *Selections*, i. p. xxiv. † *Ibid.*

‡ Hurcurra or Hircara literally means a messenger or courier; also a spy.

§ Anderson says Sir John Gayer and his friends remained confined for three years, and some of them much longer. It seems probable that for more than a year they were kept in close confinement, but that, during the rest of the period, their imprisonment was merely nominal.

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their release, and pointing out the hardships to which they were subjected for no fault of theirs.

"The Govr sent us word," runs the last paragraph of the Consultation of that day, "y^t he must obay ye Kings orders: w^t did wee designe to do? Did wee designe to starve ourselves? Why did wee not deposite goods and he would write to ye King, and wee might do ye same and ye goods should lay till ye Kings orders came abo^t them. Wee returned answer, wee robbed not Hosson Ammadan nor nobody, and would not pay or deposite any thing; if ye Kings orders are to kill us, let him come and do it quickly, wee w^d sell our lives as dear as wee could. Our people on board ye ships at ye rivers mouth and likewise those in ye ffactory wee could not longer restrain from attempting some thing extraordinary for ye support of life, therefore he would do well to consider where it would end." *

One hears the echo of Oxenden and Aungier in this remarkable passage: they were dead years ago, but the same spirit of just defiance is found in some of their successors, even during the declining days of the East India Company.

With the arrival of Sir William Norris, the ambassador specially sent out with royal sanction, at the English Company's expense, the history of the rival companies enters upon a new phase.† Norris came out with the express purpose of securing for the new Company a firman from the Great Mogul, permitting them to trade in his dominions. The servants of the old Company were naturally filled with grave apprehension. Should they recognise the ambassador or treat him with the scant courtesy with which they had so far treated Waite? Thanks to Gayer's tact and conciliatoriness, they decided to show him all marks of respect, so long as he conducted himself with impartiality and did not exclusively favour the new Company at the

* Forrest's *Selections*, i. p. 233.

† It must be remembered that at this time there were *two* English factories at Surat, with separate establishments. The President of the factory of the English Company was Sir Nicholas Waite, and Messrs. William Proby and Jeremy Bonnel formed the Council; there were also one merchant, a minister, two factors, nine writers, a surgeon and his mate, a trumpeter, and an English cook. The old, or the London, Company was comprised of Sir John Gayer as General, Stephen Colt, President, Worshipful Ephraim Bendall, Member of Council, Mr. Bernard Wyche, Accountant and Purser Marine, Mr. Epiphanius Holland, Chaplain, four senior factors, five junior factors, six writers, and a doctor. As already observed, most of these latter, if not every one of them, were in confinement at the time.

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expense of the old. But Norris made no secret of his mission, which was to secure a firman for the *English* Company and promote their interests only. The ill-feeling between the two factories increased in consequence to an alarming extent. Each tried to ruin the other, and in the attempt seemed to compass its own destruction. Norris had first gone to Fort St. George and Masulipatam, where he was treated by the factors of the old Company with indifference. He reached Surat on December 10, 1700. "His presence," says Anderson, "was the signal for a commencement of squabbles and a mutual infliction of injuries, the blame of which historians, who have only looked at one side of the facts, have thrown on the new Company." * We do not wish to sit in judgment on the conduct either of the old or the new Company. Suffice it to note that in this unfortunate struggle neither showed itself to advantage or was entirely free from blame. Soon after his arrival, Norris asked permission of the Governor to make a public entry into that historic city in order to impress the natives and lower the prestige of the old Company in their estimation. The Governor had by this time awakened to the splendid opportunity of filling the Imperial treasury, and his own pockets, which the rivalry of the two Companies offered. He charged Norris 1,800 gold mohurs for the privilege of entering the city of Surat—a demand which was willingly met. Encouraged, the Moghul officers set a money value on every favour asked by either Company, and did their best to foment the animosity in every way. They would represent to the old Company that the Emperor was willing to grant them the exclusive privilege of trade in his dominions on payment of so many lakhs; the same offer was made to the new Company if they were inclined to increase the amount of the *baksheesh*. Anderson says that on one occasion, when Aurangzib felt perplexed as to which of the two was the *real* English Company, he summoned a Mulla at Surat to solve the riddle.

"Saiyid Sedula," he adds, "the priest who was thus appealed to, began his inquiry in earnest, and was too shrewd a man to think that he could find his way through the maze without a golden clue. Sir Nicholas Waite calculated that a payment of ten thousand rupees would enable him to see quite clearly, and at this price he would draw up a report in the English Company's favour."

* *The English in Western India*, p. 148.

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In this contest of bribes the old Company came off second best, for their resources had been exhausted and they were already burdened with very heavy debts. When Norris presented himself before the Emperor and prayed for a firman, he had to expend large sums of money in bribing the officials before reaching the royal throne. But the money seems to have been all wasted, for, according to Anderson, the embassy was ill-conceived, worse planned, and still worse executed. The ambassador returned to Surat without securing his object, and left for home soon after. His career in India was far from successful. Besides the strained relations that had always existed between him and Waite, Norris contrived to make many bitter enemies in this country. He had many difficulties to contend against, and his failure may be attributed to a combination of adverse circumstances beyond his control. He left Surat early in 1702, but was not destined to reach the land of his birth alive, for he died on the way home. Feeling that his end was approaching, he dictated a vindication of his conduct and expressed the hope that, notwithstanding his misfortunes, his memory would be respected.

Two years before the death of Sir William Norris, the English Company had proposed that the two Companies should be united. Much bitterness might have been avoided if this wise proposal had been accepted. But the Directors of the London Company would not listen to any scheme of reconciliation. They continued to cherish some hopes of success, though the events of the last few years tended to show that the chances were slender. The "veterans" refused to yield to a company of "interlopers." Their patience may have been exhausted, not their pride and rancour. Better counsel, however, prevailed a little later, and on April 27, 1702, the two Companies approved an Instrument of Union, whereby it was agreed that after the 22nd of July all opposition should cease, that trade, with the exception of such as was afloat and contracted for, should be conducted on a general stock, and that the servants of the two Companies should strive to forward each other's views, so as to assist each other in disposing of their European goods and lowering the prices of Indian commodities. The Directors also wrote to their servants in India that their mutual disputes should cease, and that they should try to promote the interests of their country,

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and in future live in peace and good-will towards one another. Sir Nicholas Waite tried his utmost to prevent this amalgamation, but when he found that his efforts were unavailing, he professed the greatest concern for the success of the union, and assured the Directors of his resolution to "obliterate all past heats." But it took him some time to give effect to this assurance, and he never seems to have been reconciled to Sir John Gayer. In the instructions sent to Surat after the amalgamation of the two Companies, it was stated that Sir John Gayer was to be General and Governor of Bombay and Sir Nicholas Waite President at Surat, but it was provided that, should Sir John be a prisoner when the instructions arrived, Sir Nicholas should be provisionally General. To all other appointments the servants of the two Companies were to be nominated according to their respective ranks. Such as were not so fortunate as to obtain any appointment had the option of returning to England or remaining as free merchants in India. Now it so happened that just at this time Gayer and his party were in rigorous confinement. Taking advantage of the helpless condition of his rival, Waite represented to the Governor of Surat that he was appointed General, and that if he wished to recover money for damages done by pirates, he had better place a strong guard over the factory in which Gayer and his companions were confined. The Directors had written to Waite to use his best endeavours to procure Gayer's release, but such was the meanness of this man that he is believed to have bribed a native broker to use his influence with the Governor to keep his rival confined. Thus Sir John languished in prison, and even the death of Aurangzib in 1707 did not procure his release. The Court's instructions as to the relative position of English officers consequent on the union of the Companies were quite a riddle to the Moghul Governor of Surat. He hardly knew which of the two—Gayer or Waite—was the real representative of the English nation and chief officer of the United Company. Each party sent a broker laden with bribes to convince the Governor of the truth of its representation. Broker Rustam assured his master that Sir Nicholas Waite was the real General; on the other hand, Vanmalidas swore that it was Sir John Gayer. At last a meeting of the representatives of both parties was convened at the Governor's house to elicit definite

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information on the subject. The meeting was not devoid of dramatic incidents, for we read in one place that the representative of the English Company "pul'd out of his pocket the Hon'ble. Eng^{s} Company's seal, and laid it before all the Company, and asked if Wm Mildmay could deny that to be the Company's seal, and whether ye letters y^{t} now came was not sealed with it." Poor Mildmay was nonplussed and meekly replied that "he could not denie but that it was, and the letters were sealed with it, as by agreem^{t} between the two Comp^{as} in England when they united." This was the opportunity for Mr. Bonnel, the aforementioned representative of the English Company, to become more dramatic still. "Then Mr. Bonnell," continues the Consultation dated May 26, 1704,

"opened the Indenture of Union in a page turned downe, clapt his hand upon it, and asked if we could deny the old Comp^{a} being turned out and the trade brought under the management of the new, wch that and the seal testifyed. Wm Mildmay said he did not deny anything contained in those writeings, neither had he any orders to answer to such questions and asked the gentlemen the reason of their bringing these things upon the stage. At this time wee had been sufficiently deprest allready, had they a mind to bury us quite underground." *

If these proceedings depressed the English gentlemen, they could not have left the unfortunate Governor in a happier mood. It was at last decided to send Sir Nicholas Waite to Bombay. Waite seems to have looked after the affairs of the "very unhealthful island" for three years, during which he tried to introduce certain reforms with the object of enhancing the revenue. He had a mean opinion of Bombay, which he described as "this beggarly, ruined, but fertile island." The city had become so notorious for its unhealthiness that few dared to stay in it for any length of time. When Waite was Governor, there were only eight covenanted civilians on the island, including members of Council, two writers, and two young persons taken from the ships. The army consisted of six commissioned officers and not quite forty English soldiers. "It will be morally impossible," someone wrote at the time, "to continue much longer from going under ground, if we have not a large assistance out before October." Waite himself

* Forrest's *Selections*, i. p. 268.

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complained of continued ill health, though he magnanimously assured the Directors that he felt bound in gratitude to exert himself and inform them of all important matters until he left the world or that place. He was destined to leave Bombay before he left the world, for in 1708 his services were dispensed with, though he was not dismissed. The events chronicled above bring out the character of this man. Waite was the best hated man of his day. He had the peculiar knack of making enemies, and he contrived to offend almost every one with whom he came in close contact. On the eve of his departure from Surat, he charged two members of Council with embezzlement; they in reply maintained that he had himself been guilty of fraud. But neither party was able to prove the allegation. There is a story told by Anderson which well depicts the abhorrence in which Waite was held by some of his contemporaries in India. When a factor named Brabourne, who had gone to Fort St. George, was offered the Deputy-Governorship of Bombay while Waite was Governor, he refused it, because, he said, he would not serve under a man whose behaviour was so absurd that civilians on the other side of India said "they would rather be private sentinels at Fort St. George than serve as Second in Council under Sir Nicholas Waite.* But in spite of his faults Waite had some good points. For instance, he tried to serve his masters with as great a zeal as was shown by Sir John Child, and, like Sir John, sometimes came to grief through over-zeal. While dispensing with his services, the Company acknowledged the zeal that he had evinced for their interest, and thanked him for his services. Like his colleague, Sir William Norris, Sir Nicholas has also left behind him a vindication of his character in the form of a protest. Forrest gives a fragment of this letter. After solemnly protesting that he left Surat its poorest President, he adds :

"And I have not gott twelve hundred pounds in near three years under these clouded circumstances upon this island, besides sallary not yett rec^d, not but that I very well understand the traditional methods of accumulating suitable to the consciences of each person, for wch I never will incur the curse of heaven upon myselfe or posterity. I humbly intreat, whenever it may suit wth your interest, and avoid further heats

* *The English in Western India*, p. 168.

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betwixt you and the old Company, please to appoint a successor, who if not a compleat merchant, not overhasty to be rich, and something acquainted wth the laws of England and Europe, and not altogether ignorant of agriculture, but see and hear wi^th^ other mens eyes and ears will never answer the end of your great charge to settle this island. I hope you'l doe me the ho^nr^ admitting me going off Go^vr^, or the old Company will have their end, as has bin asserted, to disgrace me in India, will lay a perpetuall obligation, wch upon all occasions shall be greatfully acknowledged."*

It seems hardly credible that a man who carried his animosity almost to the point of vindictiveness, and tried his utmost to keep innocent men in illegal confinement, knowing it to be illegal, could have penned such a letter. Perhaps these were the words of a truly penitent soul.†

We are, happily, approaching the end of the long series of squabbles which kept the two Companies apart from each other, in spite of the Union of 1702. The principal reason why the early years of the eighteenth century were not prosperous, both in Surat and at Bombay, was that the union of the Companies was only formal. Half-hearted attempts were made to bring about a reconciliation, but old sores could not be healed so soon. Neither party ventured to be openly hostile to the other, but it was clear that the two were far from being really friendly.

"Probably," says Anderson, "each did not understand its own circumstances, and certainly not the circumstances of the other; so that it was impossible to arrive at a complete agreement as to terms, and in India their servants had rival interests, which gave rise to incessant bickerings."‡

The two Companies were allowed to drift on for some years as

* Forrest's *Selections*, i. p. xxvii.

† Anderson cites another quaint passage from the defence he made of himself and his Council as follows: "We have hitherto governed all our actions in the whole managery of your affairs with soe much caution and a little expense, when your rivalls has been unlimited, and given away those emense and incredible summes for extinguishing your virtuous settlement, and vilely aspersing in your President and Councell that value ourselves upon our frugall and faithful services" (*The English in Western India*, p. 169). We do not know what impression this defence made on the authorities; the impression it leaves on our mind is that Waite's education must have been woefully neglected when he was young.

‡ *The English in Western India*, p. 176.

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they pleased. It was at last recognised that such a state of affairs could not, and should not, be allowed to continue. The representatives of the two Companies consented to appeal to the Earl of Godolphin, Lord High Treasurer of England, who, after a most patient investigation into the questions at issue, published on September 29, 1708, his famous award. From the date of this award, which is said to be as wise and solid a decision as any to be found in the political or commercial annals of England, the two Companies became united in fact as well as in style, and carried on trade under the name of "The United Company of Merchants of England, trading to the East Indies." It was arranged that there were to be three Presidencies in India—Calcutta, Madras, and Bombay. A new Governor, with the title of General, and a Council, were appointed for Bombay. The members of Council were all selected from the ranks of civilians: their number was not fixed by law, but varied at different times. Aislabie was appointed the new General and Governor of Bombay, and Messrs. Proby, Bendall, Goodshaw, Wyche, Mildmay, Boone, and Oakley formed the Council. These were to select four of their number to be President and Council at Surat, and to nominate such factors and writers as they might think the service required. It only remains to add that in 1709 Queen Anne accepted a surrender of the London Company's charters and thus terminated their separate existence.

Some of the events described in this chapter, as, for example, the revolt of the military, the depredations of interlopers, the ruinous hostilities provoked by Sir John Child, and the bitter animosity of the two Companies, may, in some measure, account for the rapid and heavy fall in the population of Bombay since the death of Aungier. As we have seen, the number of its inhabitants fell from 60,000 in 1677 to 10,000 in 1700. Crime, immorality, and disease seemed to vie with one another in claiming their victims. Bombay was no longer described as the "Ilha da Boa Vida"; on the contrary, it had become a perfect charnel-house. Nature's curse lay heavy on it. "Of seven or eight hundred Europeans who inhabited Bombay before the war," says Anderson, "not more than sixty were left." The plague bulletin unfolded a story even more gruesome than that of to-day. There was then only one doctor to attend to the sick and the suffering, a Dr. Skinner. He, too, died, probably a victim to

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the fell disease. This deprived the city of its only medical officer.

"For as much as by the death of Dr. Skinner," observed the Council at Surat, "the Island of Bombay is destitute of a physician and the island very sickly, and a great many poor people and soldiers laying in danger of perishing for want of the help and advice of a doctor, we resolved to entertain Mr. Bartlett in the said station, allowing him £4 a month to be paid in xeraphins at 20d. to the xeraphin, according to the custom of the island, together with the same allowance for his diet as Dr. Skinner was allowed, and the usual assistance belonging to the hospital."

Think of a doctor on less than £50 a year, who was expected to look after the health of a town cursed alike by nature and man!

"Think for a moment of our doctors," writes Mr. Edwardes, "our hospitals, our plague departments to-day, and of our utter inability to prevent the people flying from the island; and then think of our brethren in those days, grappling like ourselves with pestilence and fever, with but one medical man on £4 a month between them and death!"*

Little wonder that death was then knocking at the door of almost every house on the island. The climate of Bombay proved more fatal to Europeans than to natives, and the saying that "two mussoons are the age of a man" passed into a proverb. Fryer, Hamilton, Ovington,† and other early writers testify to the deplorable condition of the city at the end of the seventeenth and during the first quarter of the eighteenth century. Bad in point of health, it was much worse as regards its morals.

"I cannot without horror mention," writes Ovington, "to what a pitch all vicious enormities were grown in this place. Their principles of action, and the consequent evil practices of the English, forwarded

* *The Rise of Bombay*, p. 123.

† Ovington, who was then a chaplain in the Royal Navy, once jokingly observed that "as the ancients gave the epithet of Fortunate to some islands in the West, because of their delightfulness and health, so the moderns may, in opposition to them, denominate Bombay the Unfortunate one in the East, because of the antipathy it bears to those two qualities." A sorry joke at best, but quite true.

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their miseries, and contributed to fill the air with those pestilential vapours that seized their vitals and speeded their hasty passage to the other world. Luxury, immodesty and a prostitute dissolution of manners found still new matter to work upon."

The favourite city of Aungier, which he did so much to build and beautify, had fallen on evil days. Looseness of morals prevailed everywhere. There was no control over the factors, for there was none over their masters. It had become the fashion to be vicious and reckless, and the man who was neither the one nor the other was an exception. Intemperance was rife to a degree. Grog shops must have flourished exceedingly in the city. In August, 1694, John Wright applied for and gained permission to keep a tavern in Bombay, and no doubt he drove a roaring trade. The authorities tried to check intemperance, but it had grown beyond their control. The legislature—or what passed as such during that period of lawlessness—had ordained that

"if any man comes into a victualling house to drink punch, he may demand one quart of good Goa arak, half a pound of sugar, and half a pound of good lime water and make his own punch. And if the bowle be not marked with the clerk of the market's seale, then the bowle may be freely broken without paying anything either for bowle or punch." *

This remarkable piece of legislation was characteristic of the day. It must not be supposed that fondness for intoxicating liquors was confined to men in a lowly state of life. On the contrary, it was regarded as the peculiar privilege of "the upper ten" to get drunk. Among these intemperance was carried to an astonishing degree. The higher classes in England had become very self-indulgent at the time, so Bombay, which was an *English* possession of the Crown more than the other two Presidencies of India, might have felt justified in following its lead. Whatever the reason, this city was never more intemperate than at the dawn of the eighteenth century. Indescribable scenes were enacted in grog shops, though they were not seldom encountered even in the Council Chamber. Bombay was then governed by a handful of tipsy councillors, and Surat fared no better. The members of Council often came to blows under the influence of

* *The English in Western India*, p. 131.

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drink. When Sir Nicholas Waite was President at Surat there was one councillor, named Mewse, who was generally found the worse for drink. The President once informed the Court that Mewse had the reputation amongst all the Company's servants, and indeed all Europeans at Surat, of being addicted to hard drinking, seldom sober and above all reproof. The true reason of his absence from Council, Waite observed on another occasion, was not any well-grounded complaint, but that his intellect was disordered by liquor and he was "unfit for virtuous conversation." How gently does the President describe the weakness of the Hon. Mr. Mewse! Not only would he himself drink, but he compelled his subordinates to do likewise and "would have nobody under him who would not drink." There is a story told of him by Anderson, which we might have refused to believe if it had been narrated by a less careful historian.

"One Sunday," runs the story, "after dinner he invited Proby, the second in Council, to drink a glass of wine at his lodgings. He soon got very quarrelsome, began by flinging the glasses about and concluded by breaking his senior's head with a bottle. Callow Carey, who was present at the time, deposed to this fact upon oath, and John Frost and Thomas Moore, two writers, set their hands to a declaration that they had heard Mewse swear 'he would pistole Proby.' Such was a wine party of Councillors in the olden time."*

It seems that Mewse was afterwards turned out of the factory by Sir Nicholas Waite and had to take refuge with the servants of the old Company. Curiously enough, Sir John Gayer defended his cause and told Waite that he had "never used any of the Company's servants so barbarously as he had done Mr. Mewse, to turn him out of the factory in a violent manner, and to send to all Europeans not to assist and help him, that he might thereby perish." Mewse was not the only councillor who made himself notorious by hard drinking and was consequently unfit for "virtuous conversation." There were several others who shared the notoriety. For instance, there was a factor named Eustace Needham, who was specially sent out by the Directors for his

* *The English in Western India*, p. 158. This story reads more like the creation of an imaginative mind than as a narration of facts. But Anderson was a careful historian who always consulted the records, and the records unblushingly vouch for the accuracy of stories even more surprising than the above.

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business experience. Unfortunately, his experience of grog shops exceeded his business enterprise. No sooner had he arrived than he proved himself "a drunken sot" and was found utterly incapable of discharging the duties of a factor. Every effort was made to reclaim him, but to no purpose, till he was eventually dismissed the Company's service. Occasionally, the honourable members of Council descended to dishonourable practices too. For instance, one Thomas Woodford was charged with embezzlement, he having misappropriated the Company's cash to a large amount. Instead of meeting the charge he made good his escape, but was rearrested and would have been sent home in a ship which was about to sail, "but that there were too many such order'd on her." Then there was Mr. William Howson, in charge of the Custom House at Mahim, who had pilfered Rs.2,302 from the public chest. He admitted the charge, but made the feeble excuse that he had intended paying back the amount. The records are silent as regards the punishment meted out to him. At times the councillors indulged in a miniature boxing tournament and punched one another's heads without feeling any the worse for it. There is at least one instance on record in which a regular duel was fought, but without any serious consequences. This was the disgraceful affray between Stephen Colt, President of the Surat factory, and Charles Peachey. On the dismissal of President Annesley, Colt was appointed to succeed him, and, according to Anderson, he seems to have managed the Company's affairs at Surat with prudence. But if we are to believe Peachey, the new President was not only an adept in the art of administration, but made considerable impression —at least on him—as a skilful pugilist. The relations between Peachey and Colt had continued strained some time before the climax was reached. For instance, the former charged the President with having "cuffed" him, and when he took to his heels, flung his slipper after him. When Peachey threatened to bring the matter to the notice of the Governor, Colt quietly replied that he might, and instead of apologising, seems to have planted a few more blows on his adversary. Not satisfied with this, the President had him beaten by one Mr. Robinson, and did everything in his power to make Peachey's life miserable. Indeed, matters came to such a pass that the desperate man

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would have taken extreme measures and even endangered the life of the President. For, in the indictment he drew up from the place of his confinement, Peachey wrote:

"When I returned with the sword, 'twas for no evil, but to rescue my companions, and had you assaulted me afresh, I should have killed you (as you pretend was my intent). I don't at all question but that the law should have found it no otherwise than *se deffendendo*."

He also quoted the twenty-ninth article of the Magna Charta, with observations by "Justice Cooke," to show that no free man could be arrested or detained in prison without resort being had to legal process. But such observations had no effect on the pugilistic President. Peachey was expelled the factory, and kept in durance vile for a long time. He wrote several letters to "The Right Honourable the President and Council for the affairs of the Right Honourable the East India Company," complaining that the President had broken his head, giving details of the injuries received at his hands, and winding up with the assurance that it was no use for them to think that by locking him up they could conceal their guilt. For fear of being charged with exaggeration, Anderson quotes the following graphic passage from one of his extraordinary letters:

"I have received from you two cuts on my head, the one very long and deep, the other a slight thing in comparison to that; then a great blow on my left arme, which has enflamed the shoulder and deprives me (at present) the use of that limb; on my right side a blow, on my ribs just below my pap, which is a stoppage to my breath, and makes me incapable of helping myself; on my left hipp another, nothing inferior to the first; but, above all, a cut on the brow of my left eye. The anguish thereof has caused a swelling, and that swelling destroyed my eyesight, which I should perfectly receive. There is a statute (which assuredly you shall take your triall upon); the sense thereof is, that whosoever shall mame (maim) another shall be thought culpable, and be punished with death."*

What a sad picture of Mr. Charles Peachey, drawn by himself! Whether he received any amends from the Right Honourable the President and Council, we know not. But the fact

* *The English in Western India*, p. 159. Anderson had, as was his wont, consulted the records of the period to testify to the truth of the statements made in this remarkable indictment.

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that such an incident should find a place in the official records of the period is another proof of the depraved condition of the factors at the end of the seventeenth century. In March, 1701,* even the Provost Marshal, one John Hall, was brought to the bar on a serious charge. He was accused of being an infamous drunkard, and when called upon to answer the indictment only cursed and swore at every one, from the highest to the lowest, expressing a hope that the time might come when he would have his revenge. The authorities were obliged to shut him up in the fort of Dongari, although, as they significantly remarked, "having too many such as he is in that or one fort or other, and with submission to your Excellency and Council, if they were all sent home, there would be a happy riddance of them." Later, Hall seems to have been packed off home, a step which was not approved of by the authorities. But in vindication of their action the Governor and Council wrote as follows:

"As to Hall, had there been any hope of reclaiming him, by being reduced, as Your Excellency and Council are pleased to direct, we should have done it; but, as he is a restless, factious, and turbulent-spirited man, ever promoting and carrying on his rascally designs, would be always seducing others to be confederates with him; therefore, as you were pleased to leave it to us, we thought it with submission much better to be rid of such a scabby sheep, that he might not infect the flock; so have sent him home." †

We shall close this "black list" of councillors and other high officials, both at Bombay and in Surat, by adding to it the name of one Captain John Wyatt, whose intemperance led to tragic results. Wyatt, who was in command of the guards at the time, was one night making himself merry at a friend's house, and returned home rather late and much the worse for liquor. As he was approaching the door of his room the sentry, as usual, challenged him; this seemed to have irritated the tipsy Captain, who flew at the sentry with drawn sword and made a thrust at him. The latter fled as fast as he could, hard pressed by the gallant commander of the guards. At that critical moment the

* Anderson may have been mistaken in fixing this date, for, as we have already seen, the post of the Provost Marshal was created in April, 1701, when Edward Simond was appointed its first incumbent.

† *The English in Western India*, p. 162.

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sand of the hour-glass happened to run out and the sepoy in whose charge it was, called to another to strike the gong. The latter complied with the request, little knowing that thereby he was ringing his own death-knell. For it enraged Captain Wyatt so much that he instantly ordered the corporal of the guard to produce the sepoy before him. The rest of the story may be narrated in Anderson's own words:

"He then commenced," writes the historian, "to beat the poor fellow, asking him how he dared to have the gong struck without waiting for his orders. The other meekly replied that he was merely acting according to established rule, but for the future he would only act as the Captain should think proper; and begged that he would cease beating him. Wyatt then took the man by the arm, deliberately turned him round, and ran his sword through his side. The sepoy dropped down dead upon the spot. This savage madman added to the barbarity of his crime by kicking and otherwise abusing the corpse of his murdered victim."*

And how was the murderer punished? The decision of the Governor in Council was that Captain Wyatt should be deprived of his commission, put into irons, and sent to England. How he was dealt with there, we know not.

Exciting must have been the proceedings of the Bombay Council during this reign of terror. The honourable members did not trouble themselves much about the administration of the affairs of the city, and legislation was altogether at a discount. The principal business transacted was often a drunken brawl or a passage at arms. Speeches were occasionally delivered, but the members were not seldom found to be totally unfit for "virtuous conversation," let alone a dignified oration! It was not, we infer, an unusual sight for some of the honourable members to come out of the Council Chamber, after a particularly warm discussion, "with their heads cut open, their arms in slings, and their eyes bunged up!" How severely sober and sedate are the members of the Governor's Council to-day! Mr. Mewse would feel very uncomfortable indeed in such an assembly! And yet, in spite of all their intemperance, coarseness of speech, and pugnacious habits, the old factors were strictly enjoined to be good and true Christians. The

* *The English in Western India*, p. 161.

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laxity of their morals was not allowed to come in the way of devotional services, which were held twice a day. Attendance at divine service was regarded by the authorities as a public duty, and there was actually a Minute in Council requiring every factor to attend at prayers eight times in the week, exclusive of Sundays. The clergyman was ordered to write down the names of such as did not attend, and a fine was inflicted upon them, which was deducted from their salaries. The early history of the English in Western India is not wanting in inconsistencies, but there is no inconsistency more glaring than the above. Indeed, it is hard to reconcile the gross misbehaviour of the factors with this Minute in Council, except on the hypothesis that it was entirely disregarded.

Where was the Chief Justice of Bombay whilst these stirring scenes were being enacted on the island? The last one we heard of was Mr. Justice Vaux—a remarkably poor specimen of a judge. After his tragic end on the Tapti, no successor was probably appointed for more than a decade. During the last eleven years of the seventeenth century not a single Court of Judicature was held in Bombay—probably not even those presided over by benches of factors—and the judge's post must have remained vacant. But with the union of the two Companies and the settlement of their affairs the Bench was reformed.

In the first quarter of the eighteenth century we hear of more than one Chief Justice. For instance, in 1719 there was the Worshipful Lawrence Parker, who, besides being Deputy-Governor, was also Accountant, drawing a salary of £100, and receiving another £100 as Chief Justice. Next year the post was filled by Mr. John Braddyll;* in 1723 we find Mr. James Courtney presiding on the Bench, and in 1724 Messrs. John Hope and Robert Newton were appointed Chief Justices, each probably

* Mr. Braddyll seems to have occupied this post only for a few months. Besides being Chief Justice, he too was Accountant, and must have found the duties of these two appointments fairly onerous, as is evidenced by the following entry, dated July 13, 1720: "Mr. Braddyll representing to the Board that the office of Chief Justice, and a close application to the Accountant's business, employs him so fully that he has not time to give the due attendance that is required as Manager of stopping the Great Breach, desires leave to be excused from that appointment: Agreed that his request be granted" (Forrest's *Selections*, ii. p. 27).

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acting for a few months only. In 1726, when the Mayor's Court was established, the post of Chief Justice was abolished and that of the Mayor substituted. Both Parker and Braddyll signalised their tenure of office, during the governorship of Mr. Charles Boone* (1716–20), in a manner characteristic of them, Parker by disobeying orders of the Council, of which he was, *ex-officio*, a member, and Braddyll by bringing a charge of defamation against the then Chaplain of Bombay, who was ultimately suspended. We shall conclude this chapter after making a brief reference to the latter of these two events, reserving a fuller notice of the former for a subsequent chapter.

John Braddyll, Chief Justice and Accountant of Bombay, seems to have conducted himself with dignity on the Bench as well as in Council. He has no charge to meet at the bar of history. Nothing is recorded against him, and even in the dispute he had with the Chaplain of Bombay it is the pulpit and not the Bench which in the end suffers most, as we shall presently see. The Rev. Mr. Cobbe† was a clergyman whose zeal for the propagation of the Master's faith at times landed him in trouble, and constantly induced him to step beyond the

* Governor Boone was evidently a man of refined tastes, and was well read in classical and antiquarian lore. He had some drawings made of the figures in the caves of Elephanta, and a descriptive account written of that historic island. The Latin inscription placed by him over the Apollo Gate, as well as the one on a bell he presented to the church, which was built during his tenure of office, show that he was gifted with some knowledge of Roman and mediæval antiquities. Even Hamilton entertained a very high opinion of him, for he pronounced him to be "a gentleman of as much honour and good sense as any that ever sat in that chair."

† It is to the energy of the Rev. Mr. Cobbe that Bombay owes its Cathedral. Its foundation was laid on November 18, 1715, when Aislabie was Governor of Bombay. A year before Cobbe had preached a sermon impressing on his congregation the necessity of a suitable church. "Well, doctor," observed the Governor after the sermon, "you have been very zealous for the church this morning." "Please y^r^ honour," he replied, "I think there was occasion enough for it, and I hope without offence." "Well, then," said the Governor, "if we must have a church, we must have a church. Do you see and get a book made and see what every one will contribute, and I will do first." Contributions flowed in fairly fast, the total amounting to more than Rs.53,000. There were some curious entries in this book. For instance, Cornelius Sodington gave Rs.20 "for my wife when I have her," Rs.150 for "a commutation from penance-corporal at Surat," and "a fine upon Bhundaries" contributed Rs.18.

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legitimate duties of his calling and trespass on the field of politics. For instance, when in 1719 the Government suspended one of their colleagues, the reverend gentleman not only took his side, but had the audacity to preach a sermon, taking for his text the words, "Though hand join in hand, the wicked shall not be unpunished," and freely criticised the action of the authorities. He was also fond of caricaturing in his sermons members of Council and other high officials of Government, and making personal attacks from the pulpit. Charles Boone, the then Governor of Bombay, must have been a man of great forbearance, for, though annoyed, he did not call upon the chaplain to account for his strange conduct or to desist. This encouraged Cobbe to vilify those with whom he happened to be in disagreement, and with no one was he on worse terms at this time than with the Worshipful John Braddyll. The latter was then having a house built, and as the monsoon was approaching he employed labourers to work even on Sundays. This was enough to enrage the zealous puritan against Braddyll, who, while regretting the necessity, explained that the work must be completed before the rains set in. "Better that ten houses should be lost," roared the angry divine, "than one Sabbath-day broke." Finding the offender unmoved either by remonstrance or threat, Cobbe resolved to have his revenge. Meeting him at a friend's house, and the conversation turning on the comfort and satisfaction of getting money, the chaplain slyly observed, "Yes, there is a satisfaction in it, I don't doubt, especially if it be gotten honestly," and when Braddyll requested him to make his meaning clear, he merely added that he would be glad to see Braddyll get his money honestly, for he "wrought even on Sundays." This naturally irritated the honourable member, but, soon after, he assured the chaplain, through Mr. Parker, that he was ready to forgive him. "He forgive me!" retorted the irate clergyman; "I shan't forgive him till he has done working a-Sundays!" And as if to emphasise the retort, he immediately after preached a sermon on the observance of the Sabbath. Braddyll felt that he was being unfairly treated by Cobbe, but did not care to take serious notice of his conduct. He continued building his house, on week days as well as Sundays, and abstained from partaking of the Holy Communion till the work of construc-

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tion was completed. Then he went to church and offered himself as a communicant. When the clergyman saw him there he pretended to be horrified, and exclaimed, "Mr. Braddyll!" The penitent councillor felt the thunderstorm approaching and prepared himself for the worst. To Cobbe's exclamation, however, he made no reply, "thinking him out of his senses," but the former repeated it a second time, and asked, "Mr. Braddyll, have you done working on Sundays? Unless y^{t}, I cannot administer you this Sacrament." Poor Braddyll was thrown into utter confusion, and stammered that he worked no longer on Sundays. Cobbe here found his opportunity for revenge. He told Braddyll that he would not give him communion unless he promised him and the congregation then present that he would work no more on Sundays. This was an awkward moment for a man who occupied a high place in Council and the highest on the Bench. To avoid a scene, however, Braddyll assured him that he would try not to work on Sundays, unless necessity obliged him. Thereupon the Rev. Mr. Cobbe was graciously pleased to give him the communion.

So far the clergyman had scored as against the Judge. But his success was short-lived. For we find the following entry made in the Consultation dated July 4, 1720:

"Mr. Braddyll acquainted the Board that Mr. Cobbe, the Chaplain, affronted him yesterday at the Communion Table, when he was going to receive the Holy Sacrament, and he had likewise affronted him publicly several times before, particularly once at Mr. Wyches, and when Mr. Parker, at Mr. Braddyll's desire, told him Mr. Braddyll would forgive him with all his heart, Mr. Cobbe replied, 'Mr. Braddyll may forgive me, but I will not forgive him.' These things being very unwarrantable and unbecoming the character of a clergyman, resolved that Mr. Cobbe be summoned to appear before this Board to-morrow morning, that we may examine fully into this affair, and Mr. Braddyll is desired to give in his allegations in writing for our better insight herein."*

Mr. Braddyll, accordingly, delivered in his complaint against Mr. Cobbe, and when the latter was acquainted with the substance thereof he took little exception to the truth of the several allegations made against him, but pleaded that he had done no more than his duty, as enjoined by the Canons and Rubric.

* Forrest's *Selections*, ii. p. 20.

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He drew up an able defence, which shows that he was well versed in the art of advocacy, and might perhaps have done better at the bar than in the pulpit. The first paragraph of his reply is so remarkable for its boldness of expression, and so characteristic of this hot-headed clergyman, that we quote it in full:

"In answer to the charge laid against me by Mr. Braddyll," opens Mr. Cobbe's defence, "an abstract of which y^r Hon^r was pleased to order me the 6th instant, I am sorry to find that a person in his station should, instead of being ashamed, make it a matter of complaint for the reproof of a sin so exceeding sinfull, but is God Almighty less in India than he is in England? Or has he given any man license to sin? Is the violation of this holy day become the less enormous, because it is so frequently and irreligiously profaned, or must it out of good manners be past by unobserved, connived and winked at, especially when it comes from so eminent a quarter? Your Hon^r, I hope, who hath so often declared an affection for this place, and the great concern you have to advance the public good, will see what cause there is for complaint, and judge impartially in a case so very offensive to our religion and wellfare, and in a matter tending so effectually to destroy both." *

He then proceeded to scrutinise each of the allegations, disputing the correctness of some and denying the reasonableness of others. He tendered no apology, nor did he seek pardon, though he admitted that, while exacting from Mr. Braddyll the promise not to work on Sundays, he might have chosen a fitter place for his admonition than the church.

"But," he adds, "considering his offence was so public and notorious for which our Church hath in severall places refused the benefit of the Sacrament, particularly in Canon ye 26th and in ye 2d Rubrick before the Communion, I determined to make this a virtue of necessity, that thereby he might openly declare himself to have repented and that the congregation might thereby be satisfied, which before were offended."

He vehemently protested against the allegation of being malicious towards Braddyll.

"God forbid!" he wrote, "that I should live in malice with any one. I am in charity, I thank God, with him and all the world, or else I should not have presumed to have come so unprepared to that sacred

* Forrest's *Selections*, ii. p. 25

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ordinance.* 'Tis rather to be feared that he himself was not in charity with his neighbour by his not appearing at Church that day, tho' 'twas Whit Sunday."

Learned though the defence is, it is far from convincing. It certainly did not satisfy the President and Council. Taking it in the most favourable light, they were unanimously of opinion that "Mr. Cobbe acted as judge of Mr. Braddyll's conscience," and in so doing was guilty of a "heavy crime." Poor Mr. Cobbe must have felt sorry that he cited the 26th Canon and the 2nd Rubric in his defence. The substance of these was stated by the Governor to be as follows: "If any person be a notorious and evil liver or has given offence to the congregation or done any wrong to his neighbour by word or deed, he is to be admonished not to come to the Lord's Table till he hath repented." Mr. Cobbe was, therefore, called upon to prove that Mr. Braddyll was "a notorious and evil liver." The unfortunate clergyman found himself in a predicament, for although he had never accused the plaintiff of these serious charges, his citing the said Canon and Rubric was construed to imply such an accusation. The Council virtually found the chaplain guilty, and the question as to what censure should be passed on him was next considered. After it had been debated upon some time, Mr. Braddyll moved that as Mr. Cobbe had affronted him publicly in the church, he might ask his pardon there, which appearing reasonable, it was ordered that Mr. Cobbe should ask Mr. Braddyll's pardon publicly in the church on the following Sunday, immediately after reading the Communion Service, in the following words:

"Whereas on Sunday the 3rd instant, through mistake, I did affront Mr. Braddyll at the Communion table, I do hereby notify to this congregation here present, that on more mature consideration I find myself to be in the wrong, and do hereby beg Mr. Braddyll's pardon for the injury done him and the offence given him and the other communicants."

There can be no doubt that the chaplain's conduct, according to modern standards, was highly reprehensible,† and that he had

* Cf. the language of the Church Communion Service.

† A clergyman was recently reprimanded in England for refusing the Sacrament on his own authority to a lady of whose conduct he disapproved.

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been rightly found guilty. His insulting Mr. Braddyll in church and the manner in which he exacted the promise from him that he would not work on Sundays in future were as indecorous as they were offensive. Not less offensive were some of his sermons in which he criticised the action of Government.

"By pronouncing a condemnation of the Council's acts from the pulpit," says a writer * in one of the early volumes of the *Bombay Quarterly Review*,† "he had converted that which was exclusively designed for the utterance and exposition of divine oracles into a political engine, and intruded into matters which were beyond his province."

But taking Mr. Cobbe's conduct at its worst, the President and Council were not well advised in compelling a man of his position and learning to tender such an undignified apology, in a place where he was expected to conduct himself with dignity, and where he himself expected respect from his flock. The clergyman naturally refused to stultify himself before his congregation. He protested most vehemently against the imposition of such a degrading punishment, and when summoned before the Council, went so far as to dispute the Governor's authority to decide the matter, maintaining that he held no commission from the King of England.

"You know, gentlemen," he pleaded with eloquence, "how unthankful an office this is, and how few there are that care to undertake it, but to make a public acknowledgment of what wee are satisfied is our duty and to ask pardon for what we are expressly enjoyned to reprove, would be to render this office indispensable[?], as it is extremely precarious, ineffectual, and useless."

And again:

"I should not have presumed to hope for excuse after so awful a determination in Council were it a matter indifferent and of a private concern; for besides, gentlemen, the irregularity of publishing or proclaiming anything in church in the time of Divine Service but by the Minister or by him but what is prescribed in the rules of our common

* We believe the writer must have been no other than Mr. Anderson, the famous historian of Bombay, who contributed largely to the *Bombay Quarterly Review*, which he edited with marked ability until within a few weeks of his death in 1857.

† iii., January, 1856, p. 45.

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prayer-book or enjoyned by the King or by the ordinary of the place (Rubric after the Nicene Creed), such compliance would not only give encouragement to sin by lessening too much the credit of reproof, but inevitably draw contempt upon the clergy and wound even religion through the sides of the ministry. In this therefore I hope, gentlemen, you will pardon your servant in that I cannot, I dare not, yield my assent without declining that duty, without betraying that trust for which I am accountable to a more awful tribunall." *

But the President and Council were inexorable. They were much irritated by Mr. Cobbe's defiant answer, and more so by his casting doubt on their authority. He was called in by them and told that his defence had been considered, and that

"he had given great offence to this Board in severall parts thereof, particularly in one, where he intimates we have no authority over him and arraigns the justice of our said Resolution, and then askt him if he did not know the Gov^{s} power was delegated to him by his Majesty. After some hesitation Mr. Cobbe said he had heard the Govr had no commission from the King. The President then condescended to have the charter from King Charles to the R. Hon'ble Company read to him, after which he said he did not know the Govr had so full a power and added that now he did."

The Governor then raked up old grievances and reminded the offender of a sermon he had preached some time ago which tended to lessen the authority of Government, and of another which he had lately preached, reflecting on the sense of justice of the Board in suspending Mr. Parker. Mr. Cobbe, apprehending danger, expressed his regret for what had occurred and showed his willingness to apologise to Mr. Braddyll, though not in church. But he appealed too late, and at a time when the temper of the Governor and his colleagues was far from conciliatory. On July 23, 1720, they drew up a long and a strong indictment against the chaplain, the first charge being

"that on the Secretarys reading Mr. Cobbe our R^{t} Honbl^{e} Master's orders, he was so imprudent as to say in the Governors presence that he had no masters at all; after which notice was taken of some paragraphs of a sermon preached about a year ago which were tending to traduce this Government, and calculated to induce a belief into the auditory, not only of the independency of the ministry to the Civil Government, but

* Forrest's *Selections*, ii. p. 29.

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also that the same was injuriously invaded at this place by those that have the power of the Civil Government in their hands. . . . It was likewise but too notorious and usual with him to draw odious characters in the sermons and apply them to such persons with whom he has had any words of difference, tho' but upon common and indifferent subjects, and his pride and unmannerly discourse in private houses where he has made visits and at the tables of some of the most eminent inhabitants, is too well known to need a particular proof here." *

On these grounds the Board resolved to suspend the Rev. Mr. Cobbe from acting as their chaplain, and he was accordingly suspended. When apprised of the suspension, he merely said, "Very well, what your Honour pleases." A Mr. Thomas Waters † was appointed to officiate in his place, his only qualification being that he "read well." Mr. Cobbe soon left the country and lived to a good old age in England. The Directors seem to have dealt with him more liberally than the Government of Bombay. Fifty-two years after he had been appointed chaplain, he published an account of the Bombay Cathedral, dedicating it with many expressions of gratitude to the Honourable the Court of Directors.

* Forrest's *Selections*, ii. p. 30.

† Mr. Waters, it seems, had already acted as the chaplain's deputy on the princely remuneration of eleven rupees, and it was because he was found to be a good reader that he was appointed to officiate. But, according to the writer in the *Bombay Quarterly Review* referred to above, he by no means regarded himself as under any obligation to practise what he preached; for, eight or nine years afterwards, he was tried for embezzling public money, and although he made a long and an able defence, was ordered to refund nearly sixteen thousand rupees. Perhaps the Board might have done better to have pocketed their dignity and retained Mr. Cobbe, who, like his namesake, Frances P. Cobbe, preferred to follow the dictates of conscience rather than those of any earthly authority. Such men were not too common even then at £50 per annum.

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CHAPTER VII

THE WORKING OF JUDICIAL INSTITUTIONS IN BOMBAY

WE have now arrived at a stage in our inquiry when it becomes desirable to pause before proceeding further, with the view to ascertain the effect of the working of judicial institutions in early Bombay. The East India Company were vested with large powers by the Crown, which they, in their turn, delegated to their servants in India. By virtue of these powers certain regulations were framed and laws published. Unfortunately, no trace of these laws is to be found to-day, though some of the regulations, which owe their existence, in a large measure, to the wisdom of Oxenden and Aungier, may still be deciphered in the Consultation Books of the period. We have also seen that special charters were granted to the English, empowering them to exercise martial as well as municipal law, and enabling them to chastise offenders and settle disputes in India, and that at the close of the seventeenth century a Judge-Advocate was especially sent out from England to preside over the newly-constituted Court of Admiralty. We now propose to describe, in this chapter, the manner in which the factors gave effect to the very important though diverse powers which they were called upon to exercise over their countrymen in the East Indies. How was judicial administration carried on in the town and island of Bombay and in the historic city of Surat before the establishment of the Mayor's Court? What processes of law obtained, and what rules of procedure, if any, were observed at that period? These are among the questions we shall attempt to answer here. But the scope of our inquiry will be limited, as the sources of our information are not many. Indeed, we shall have to depend here mainly on that store-house of valuable

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and entertaining information collected by Mr. Forrest in his two volumes of *Selections*. There are a few other sources besides, as, for instance, the accounts of Hamilton and Anderson. But, circumscribed as our inquiry will necessarily be, we trust it will not be found uninteresting.

The first point that strikes us in our investigation is the fact that justice, in those days, was administered in a very arbitrary fashion, and that law was generally held of little or no account. The factors never professed to be learned in the law, and their notions of justice and fairplay were often rather anomalous. When one of them, for instance, was removed from the counting-house and straightway installed on the Bench, the transition was so sudden and complete that the unfortunate man could not but have felt considerable difficulty in holding the scales of justice evenly. There were no codes to guide him, no law-reports or law-books to enlighten him. Perhaps he needed none, for the justice he attempted to administer was generally dictated by conscience and common sense. The principal business of the judge then was to award punishment rather than to decide law-suits. Strange charges were sometimes brought before the Court for investigation, and stranger decrees passed. The severity of criminal justice seems revolting to us to-day, though it should not be judged by a reference to the existing state of our judicial administration either in England or in India, but to what it was, even in Great Britain, at the close of the seventeenth and the commencement of the eighteenth century. We shall describe the barbarity of those days in some detail in the next chapter. The state of judicial administration under the Great Mogul was indescribably corrupt when the English first established a factory at Surat. As Hamilton observes, the Mahomedans had the laws in their hands, and gave justice to those who paid for it. The judges were allowed as fees a certain per-centage on the value of all claims adjusted by them.

"Many examples I have seen," he adds, "between honest men of low fortunes and villains cloathed with public characters and good fortunes, yet in some cases I have seen justice take place. The English and Dutch Directors or Agents there make good figures, because the officers of state and justice get yearly presents or pensions from them." *

* *A New Account of the East Indies*, i. p. 168.

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The administration of criminal justice at Surat was also arbitrary in the extreme. Justice was dispensed with such extraordinary promptitude that offenders were sometimes ushered into the other world almost before they knew that they had committed any offence. The Mahomedan ideal of justice did not prove inspiring to the English; on the contrary, it must have demoralised their own ideal, which was not very high at the time. When they settled down in Bombay, a few years after, they found that the Portuguese had adopted no measures to ensure pure and speedy justice to the inhabitants of the island. They were too occupied at the time with getting spices and making converts. There was a Relação in Bassein, and there were several Courts of Judicature in Goa, including the terrible Inquisition Court, where the laws of the Church had precedence of the laws of the State. But we hear of no Court in the city of Bombay itself, neither magistrates nor judges. Not that their law or their mode of administering justice would have formed a model for the English to imitate. The latter had brought with them the law of their country, and, as we have already observed, there was not the least vestige of Portuguese law or courts at any time in Bombay after its cession to the English by the King of Portugal.* From the very commencement of their career in India, whether in Bombay or at Surat, in Bengal or at Fort St. David, the English administered justice to their countrymen according to the laws of their country and the provisions of the various charters which had been granted them from time to time. Let us now give instances of certain offences tried and disputes settled by the factors before the establishment of the Mayor's Court. We shall often find them faulty in their judgment and impatient of observing even the essential forms of the law; but we shall also discover that their sense of justice was not warped by base motives, that they delivered their judgments freely and boldly, according to the dictates of conscience and in the light of common sense, and, above all, that they tried to dispense what they honestly believed to be justice.

* *The Advocate-General* v. *Richmond*, Perry's Oriental Cases, p. 573. But cf. the reference to a judge versed in the civil law as peculiarly fitted for a population accustomed to that law *supra*).

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On April 16, 1662, long before the Admiralty Court was established in Bombay, and even before the first Court of Judicature was instituted on the island, Gerald Aungier wrote a letter to the Deputy-Governor of Bombay in which occurs the following remarkable passage:

"On y^e *Hunt^r* Ffrigott goes one Jno Hallewell form^rly mate of ship *George* who is under restraint occasioned by an information delivered in unto us by Mr. Christ^o Robson, M^r of s^d ship, and signed by one Charles Gould who belonged unto her, whereby wee are given to understand y^t by accident he was ye occasion of drowning of one Ffranc^s Peck in Quedah River. Wee have taken ye depositions of those who were pres^t when ye accident happened, wch wee send you inclosed. Y^e Deponents likewise goe downe on ye Ffrigott whose depositions on oath you must retake and proceed in ye case according to forme and ye Honble Comp^e orders, calling a Court and trying s^d Jno Hallewell by a Jury of 12 men, who if found not guilty you may dycharge; if otherwise, keep in durance untill ye P^r coming downe. Lett him be tryed wth all convenient speed in regard he is intended to voyage to Siam this yeare, and wee would by noe meanes be his hindrance in case he shall be found by ye Court to be guiltless of wilfull murther."*

Whether John Hallewell was allowed to proceed to Siam, or kept in durance vile, we have no means of knowing, for we lose sight of him after this. Cases of murder, even accidental homicide such as the above, seem to have been very rare, though in a letter dated June 4, 1672, we find the Surat Council writing to Bombay, with reference to their "ord^r for ye executing of a murtherer convicted thereof by a Jury and sentenced," that they "know no reason why ye sentence should not be put in execution." It may be noticed in passing that the Bombay Council used to send copies of the proceedings of the Court of Judicature for the information of the President at Surat. "We allso send you," they wrote in a letter dated June 27, 1677, "ye coppies of ye transactions of the 3 last Sessions in o^r Court of Judicature for y^or greater satisfaction in all publique affaires on ye Island." There were several cases of misdemeanour and other minor offences, such as disobedience of lawful orders, neglect of duty, unruly conduct, and the like. For instance, in 1672, the Deputy-Governor of Bombay complained to the President at Surat (Bombay being then subordinate to Surat)

* Forrest's *Selections*, i. p. 60.

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of the misbehaviour of one Captain Burgess. Aungier was a strict master, and severely punished every breach of discipline. He wrote to his Deputy on April 23, 1672, as follows:

"Whereas wee given to understand y^t^ Capt Jno Burgees hath of late behaved himselfe wth much rudeness and disrespect to ye Deputy-Govr, and uttered sev^ll^ descourses tending to ye great dishon^r^ and contempt of ye Honb^le^ Comp^s^ authority and Gover^mt^ as appears by ye attestations of sev^ll^ credible persons sent unto us. Upon due consideration of ye evill consequence wch may accrew from such disord^rs^, wee doe hereby for ye present desanull and make void the Commission wch wee have given ye s^d^ Ca^pt^ Burgees as Ca^pt^ of one of ye foot Comp^s^, and doe suspend him from all command over ye soldiery and from his office and place in Councell, and doe further require you ye D. Govr and ye rest of ye Councell y^t^ you cause ye s^d^ Capt Burgees to be committed a prison^r^ to ye Marshall, and thereto be kept till ye Govr shall arrive or till ord^r^ shall come for his tryall, and for ye bett^r^ preventing any disord^r^ wch may happen among ye soldiery wee require you to keep it very private and to take a convenient time to put it in execution; to witt when Capt Shaxton's Comp^s^ hath ye Command of ye watch; when summoning ye s^d^ Capt Burgees to Councell, you may then publish and put in execution this ord^r^, causeing ye guards to be ready to prevent any mutiny y^t^ may arise, and aft^r^wards you are to publish this o^r^ proclamation wch wee here send you, for ye bett^r^ reduceing ye soldiery in good ord^r^ and gover^mt^." *

From the above extract it would seem that the military officers were discontented even during the governorship of Gerald Aungier. But he had proved more than a match for them all, and it was only after his death that they succeeded in gaining the upper hand and eventually broke out into open revolt under the banner of Captain Keigwin. The Deputy-Governor seems to have carried out his superior's injunctions, for we find the latter again writing to him on May 16, 1672, as follows:

"Wee observe w^t^ you write concerning Capt Burgees whose charges wee would have drawne up and deliver him, requireing his answer in writing thereunto, wch if he deliver in lett be sent up to us; togeather wth yor opinions in ye case, y^t^ we may pass a definitive sentence therein, and as to ye Marsh^ll^ Pett^r^ resume his case and lett him rec^e^ such punish^mt^ as you shall thinke fitting to inflict on him." †

But, after making all this fuss, the disrespectful Captain was

* Forrest's *Selections*, i. pp. 62-63. † *Ibid.* p. 64.

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pardoned, as is apparent from an entry in a letter from Surat to Bombay, dated August 29, 1672:

"When Capt Burges arrives, wee shall put him in command of the Ffriggott: since you have upon his submission thought him worthy of ye charge: wee know him able and suffitient for it, and hope his future comport^{mt} to his superiours will be such as may meritt their countenance." *

In this connection we hear of one Captain Shaxton, who had the command of the watch when the order regarding his unruly brother officer was put into execution. Shaxton must have been an officer of some repute, for in the provisional list of members of the Bombay Council which Aungier was obliged to send to his Deputy, as he was himself unable to go to Bombay, we find his name next to the Deputy-Governor's. But a couple of years after this Shaxton fell under the ban of Government on a charge similar to the one from which Burgess escaped so narrowly. He was, as we have noted elsewhere, accused of abetting mutinous soldiers, and was placed in confinement.

"For whose trial," says Fryer, "after a long endeavour to bring him to acknowledgment, was erected a select Court of Judicature, and an attorney ordered to impeach him, who, with some borrowed rhetorick, endeavoured to make him appear a second Catiline; but he cleared himself so handsomely of all objections that they had no more to answer than that it should be referred to the Company before whom he must personally appear, and therefore was ordered home, but died during his voyage." †

It is interesting to note that there was an attorney even when Dr. Fryer was in Bombay, but the probability is that he was an attorney not by profession, but through necessity, and the fact that he tried to impeach Shaxton with some "borrowed rhetorick" —and that too without success—supports this conjecture. In 1675 a duel appears to have been fought between Captain Minchin and a Mr. Horingold in Bombay—the result of hard drinking. Both the combatants were men of some status at the time, and President Aungier would have punished them severely but for the

* Forrest's *Selections*, i. p. 68.
† *East Indies and Persia*, p. 121.

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intercession of influential friends. This is how he notices the affair in a letter from Swally Marine dated January 24, 1675–76 :

" Wee observe w^t you write in y^or l.re and Consultation touching ye quarrell and duell fought between Capt Minchin and Mr. Horingold, wch is ye usuall effect of y^t accursed Bombay Punch, to ye shame, scandall and ruine of o^r nation and religion. Wee thought Mr. Horingold and Capt Minchin had been persons of a more sober and regular conversation; and y^t they had more regard to ye Comp^ys authority, ye observation of ye lawes and Govern^mt, and to their owne reputation then to rend^r themselves soe scandalous as they have done, first in besotting y^mselves with drunkenness, and afterwards in breaking ye lawes. Wee doe very well approve of w^t you have done in suspending y^m from their offices and confining y^m, and doe discommend ye rediculous policy of y^t Gentleman who was of ye contrary opinion; and wee doe req^t you hereafter to be very strict and severe in ye execution of ye Comp^as lawes without respect of persons w^tsoever. Wee had resolved as a just punish^mt for their offence not only to have continued ye suspension of ye said criminalls from their offices, but alsoe to have expressed further demonstration of o^r just displeasure against y^m; but you having interceded soe much in their behalves, all ye Commanders of ye Europe Shipping alsoe having become their mediators, and they also having expressed a sence of their ffault, and promising never to be guilty of ye like againe, not having knowne y^m formerly subject to such irregularities, wee doe think good to restore y^m againe to their places; only for their better remembrance sake wee doe req^r y^t they be fined 50 Xeraphins a peece towards ye building ye new Hospitall wch we require you to see performed." *

Twenty-five years after, another duel was fought between Messrs. Enoch Walsh and Ralph Hartley. Both of them were known to be desperate characters, the former being notorious for idleness, heavily involved in debt, and generally of dissolute habits, whilst the latter was afterwards found to be concerned in some fraud. It was evidently no Frenchman's duel, for Hartley was severely wounded, and it was at first feared that his injury would prove fatal, though he eventually recovered.† What sort of punishment was awarded to these culprits, we have no means of ascertaining. It is not improbable that they escaped unpunished, for the doors of the Court of Judicature at Bombay had not then been reopened. In the letter in which Aungier refers to the duel between Minchin and Horingold, reference is also

* Forrest's *Selections*, i. p. 79.

† *The English in Western India*, p. 160.

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made to the conduct of one Mr. Stephen Vatick, who was found guilty of disclosing official secrets.

"Wee doe much resent," the Governor wrote, "ye ffoolish imprudent proceeding of Mr. Stephen Vatick in discovering ye secrets of ye Councell in declaring ye sence of any member thereof in cases of justice; wherein he hath discovered himselfe to be of a nature either ill-disposed, or uncapable of soe weighty charge, wee doe in ye Comp^as name severely check him for it and req^r him to forbeare such practices as he values his owne Hon^or and his future good." *

We are rather surprised at the leniency with which Vatick was treated for so serious an offence, but we dare say he grew wiser after Aungier's significant hint. We have not yet done with the above letter, for it refers to another matter which bears fresh testimony to Aungier's love of justice and his respect for law. Two of the factors in Bombay were found to be misbehaving and quarrelling with each other. The matter having been reported to the President, he wrote as follows:

"As to the quarrelle between May and Wrightington wee shall let y^m both know o^r sence of their Rashness and Imprudence; let them beware how they give us such another occasion of offence; but as to their Proceedings at Law wee doe not thinke good to stopp ye course of Justice upon an idle suggestion of ye Judges Partiality whome wee have a better opinion off y^n to thinke he will fforfeit his creditt, and it may be his office also, by an unjustifiable sentence. The Commd^rs of ships as well as all others ought to be subject to Law, in case of Justice and Common Right, nor are they more free from arrests y^n any others; but if you find y^m prosecuted on triviall causes by vexatious suites at their departure, wch may tend to the loss and hindrance of their voyage, and loss and prejudice to ye Hono^ble Company, you ought not to admitt of such proceedings, and ye officers off ye Court to forbeare prosecuting y^m till their returne, and y^n they may take their course at last." †

Aungier must have been kept fairly busy with the complaints which the heads of the various factories in India and elsewhere submitted to him regarding the misconduct of their subordinates. The English had a factory in Persia when Aungier was President at Surat. The Chief of this factory had to complain about the behaviour of two young factors. Aungier sent a reply

* Forrest's *Selections*, i. p. 79. † *Ibid.*

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from Swally Marine, dated April 7, 1676, to his "Honored Ffreinds" in Persia, to the following effect:

"Wee observe what you write touching ye very imprudent carriage of Mr. Johnson and Ffeild wch tended soe much to ye prejudice of ye Hono^ble^ Company and Nation, touching wch wee called y^m^ here to a severe examination, before the Commanders of ye Hono^ble^ Comp^as^ ships and others, and caused Capt Clarke, Mr. Limbery, &ca., Englishmen, to deliver their depositions on oath. But they declaring their ignorance thereof as to their own knowledge, and saying they only heard it from you, and you also not sending us any other attestations of ye English there with you y^t^ were of any weight, and Johnson and Ffeild utterly disavowing whatever you alleged against them, wee durst not undertake any rigorous proceedings against y^m^ without sufficient evidence, but have referred the case home to ye Company to whome wee have sent y^r^ charge together with their answerr, and ye depositions taken, coppies whereof wee herewith send you, and wee desire that you employ y^or^ utmost power and authority to forbid such naughty practices in ye future, for they are of dangerous consequence and ill-practice and may sometimes tend to ye utter losse of o^r^ priviledges in y^t^ Port." *

In 1672, as we have already seen, the attitude of the military in Bombay was far from pacific. The officers were in a sullen mood and the temper of the men was decidedly hostile. Under the circumstances, it is not surprising to find the following injunction in the letter dated May 6, 1672:

"For the tryall of those notorious mutiners y^t^ tore ye Proclamation and opposed ye execution of justice on ye wench you caused to be shaved and sett on an ass, lett a Jury be empannalled, whom if they finde guilty of mutiny, lett them be sentenced, condemned, and executed according to ye 3d. Article of ye Honble Comp^a^ lawes for ye preservation of ye peace and suppressing of mutiny, sedition and Rebellion." †

What an atrocious crime that unfortunate woman must have committed to deserve the punishment of being shaved and set on an ass! It illustrates the barbarous character of criminal justice in those days. A similar offence was committed in Bombay in 1701, for we find the following entry in a letter to Lieutenant William Shaw:

"Wee are sorry to understand that there should be any person on this Island so disrespectfull to Government as to tear our Proclamation, but

* Forrest's *Selections*, i. p. 87. † *Ibid.* p. 64.

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since there is and that so high a misdemeanour may (if possible) be duely rewarded, wee would have you give publick notice that any person that shall discover the said offender to you shall be liberally rewarded for his paines." *

There must have been several courts martial held in Bombay in those days, one of them having assembled in 1677. The circumstances of the case were most extraordinary, and are described at some length in a letter from the Bombay Council dated April 10, 1677. Its first paragraph runs as follows:

"Wee had lately an unfortunate accident befallen us, and yet wee have reason to bles God for his deliverance of us from a greater mischief. It was thus: Ye Storekeeper as accustomary had sent up some powder to dry upon ye North East Bastian. It was about 2 o'clock in ye after noon w^n one of our Corpor^lls by name Stanton took an old bandalier and filled it wth wild fire, intending to ty it to a dogs tail then in the guard, and coming to the gate, the dog being not in the way, he took ye bandalier, there being a string tied to it, and flung it towards the Judges old house, but ye wind being very strong it blew upon ye Bastian and fired all the powder, which was 35 barrells all English. There was 8 Coolys tending it, and one centry who were all burnt to death, whereof 6 blown into ye ditch and the Parade, and some limbs blown over ye ffort. The blow was so great, much of ye powder, it being in a heap together, that it blew open all the doors of the magazines in ye ffort though well locked; nay, blew open ye doors of the rooms under the second lodgings, and made most part of the town shake. It sunck ye Tarras, a small matter of the bastian, but has done ye arch underneath no damage. Wee had this day a Councell of war upon the Corporall, and haveing examined all witnesses and circumstances, there severall that saw him make the fuse and fling it, wee could not find him guilty of any wilfull treacherous designe, but considering he was an officer into whose hands our lives are all sometimes intrusted to be so wretchedly careles, he being but a little before come of the bastian himselfe, we cashiered him from ever more bearing arms, and to run the gantlet three times, for an example to all." †

When a sentence of death was passed on a soldier by a court martial, a warrant was issued to the officer commanding the forces for its execution. A court martial was held in Surat at the end of 1759, when Augustine Bully, a private soldier,

* Forrest's *Selections*, i. p. 167. † *Ibid.* p. 131.

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was accused of desertion and sentenced to death. The warrant issued to Captain Louis D'Gloss ran as follows:

"By virtue of a power given us by the Honble Richd Bourchier, Esqr., President and Go^vr &ca., Council on Bombay for putting in execution the sentence of a Genl Court Martial upon Augustine Bully, who having been tried at Bombay agreable to the Articles of War was found guilty of desertion and sentenced to be shot to death by a Platoon of soldiers. This is therefore to will and impower you to put the said sentence in execution in the most publick manner on Fryday next, the twenty-first instant, between the hours of nine in the forenoon and three in the afternoon of that day, for which this shall be to you and all others whom it may concern a sufficient warrant. Given under our hands and seals in Surat this eighteenth day of December, in the year of our Lord one thousand seven hundred and fifty-nine, and in the thirty-third year of His Majesty's reign." *

We have said elsewhere that the factors were not too particular in the observance of even the most essential forms of the law. There was certainly no lack of promptitude in their method, but such promptitude often defeated the ends of justice. Hamilton says that in 1686 Sir John Weyburn was specially sent out from England with a commission of Judge-Admiral from the King to condemn and hang thirteen of the inhabitants of St. Helena, where, in a tumult caused by the oppressions of the Governor of that island, one Johnson was killed.

"Sir John Weyburn," he adds, "took his passage to India on board the ship *London*, and in his way, called at St. Helena, and hanged up the 13 proscribed persons *without form of process*, for which the Company paid dear afterwards, and so had Sir John, had he lived." †

Soon after coming to Bombay, Sir John passed away, to answer for this summary execution at a tribunal far above all earthly courts. The punishment awarded in some cases was not only severe, but strikes us to-day as somewhat fantastic. For instance, when in 1686 the mate and gunner of a ship were tried and found guilty of disorderly conduct, they were sentenced to a singular punishment—"sending through the fleet." They were taken from ship to ship, and

* Forrest's *Selections*, i. p. 326.

† *A New Account of the East Indies*, p. 225.

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on each they received ten lashes. On their own ship they received twenty lashes. They were then taken ashore, and after the infliction of ten more lashes under the wall of the port, were discharged. For the sake of the unfortunate mate and gunner, let us hope there were not over many ships in the harbour of Bombay in 1686!

The preponderance of criminal matters over civil in the proceedings of the Bombay and Surat Councils in the seventeenth and eighteenth centuries is significant, though not surprising. As has been already observed, the factors were more busy investigating offences and awarding punishment than deciding suits and assessing damages. Disputes were generally compromised out of court or left to the judgment of arbitrators. It is but seldom that we come across entries like the following: "The coppie of Mr. Grays last Will and Testament wee have caused to be registered in ye Court. Herewith send 3 copies wth y^r^ seale of the Court annexed to y^m^, ye charges of ye Court the Dep^y^ Govr will satisfie." * Or, as in a letter bearing date August 13, 1686:

"Enclosed send yor Exc^y^ &ca. an attestation made by Mr. Hayes attorney for Capt Adderton deceased. It appearing y^t^ ye papers relateing to him and Mrs. Bentam was seized by Keigwin &ca. wch Capt Adderton in his life time declared never to have re^cd^ back againe, and there being none here y^t^ can give any further light into ye mat^tr^, therefore ye Execu^tr^ of ye said Capt Adderton humbly desires y^t^ yor Exc^y^ &ca would be pleased to order her to make oath according to ye decree here, upon wch ye money shall be paid, in regard there is other acco^tts^ depending betwixt them." †

As to the taking of oath, we find the Bombay Council deploring the absence of a person qualified to administer the proper oath to the Deputy-Governor.

"The prsent Dep^t^ Govr," they wrote, "sayth y^t^ after he re^cd^ his Commission from yor Rt. Hono^ble^ Comp^a^ he tooke ye Sacra^mt^ Oaths of Alleig^e^ and Supremisy and Test, and since he came here he hath taken ye Sacra^mt^ and is ready to take ye Oath as D. G., when the method of y^t^ oath is known, there being none to be found here, pr.sumeing it may be imbezled along wth sever^ll^ other bookes and papers in ye time of ye Revolution."

* Forrest's *Selections*, i. p. 131. † *Ibid.* p. 143.

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Here is another little bit which makes mention of Dr. St. John and the Admiralty Court:

"The Arrab Merch^tt who bought y^e *Prosperous* haveing made application to us for a bill of sale and ye said shipp being first sold by Dr. St. John in ye Court of Admiralty ye proper right and title doth proceed from thence, for Mad^e Niccolls can give none, her husband never haveing re^cd possession; therefore wee desire y^t some Instrument may be sent to intitle him thereunto."

We have already referred to the curious statute law of Bombay, which declared the marriage of a European minor, performed without the prior sanction of the Governor, null and void, and the application of which reflected discredit on the otherwise excellent character of Sir John Gayer. There is another instance in which an unwary individual made himself liable for the debts of a deceased person by marrying his widow. The following passage occurs in a letter from the Bombay Council to the Company dated December 29, 1686:

"Yo^r Honors have writt to his Ex^cy and Councill to permitt one Mr. John Broxolme to returne to his native country, having some estate fallen to him. Now during ye time of his being on this Island he has entered into ye marriage Covenants wth ye widdow of one Thomas Bygott, by wch means he became lyable to pay ye Debts of the said Bygott, and wee finding him to stand indebted to yor Honors ye sume of Xs.880 and in sterling mony at £28 10s. for which sume wee have here enclosed his bond, made payable to yor Hono^rs wch hope will be punctually complied with." *

One cannot help feeling some sympathy for John Broxolme! The Judge himself came to grief by marrying a widow, though he seems to have repudiated his liability to pay the debts of the lady's former husband. The matter is referred to in an interesting letter dated March 8, 1676, as follows:

"Mr. Child yesterday came to us, and desired justice of us in a case of a debt which he pretends ye Judge owes him, and refuses payment. The debt is said for mony rec^d of Mr. Richd Francis deceased by Mr. Ball deceased, which mony Mr. Child being impowered by the administratours of the Mr. Francis as their attorney, demands of ye Judge as Executour of Mr. Ball's will by virtu of the marriage between ye Judge and Mr.

* Forrest's *Selections*, i. p. 149.

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Ball's widdow. Mr. Child did wholly refer himselfe to us, but the Judge it seems mistrusting our integrity and justice, that wee would either give a partiall sentence or else take upon us to decide controversies not under our authority to determine, under wch notion he pretended his case was, did appeal to a higher power, though wee had thought our carriage hitherto, both to ye world and him, might have been a sufficient motive to induce him to believe us not so unjust as to take upon us to give sentence in matters above our power, or given to partiallity. However, wee well knowing ye Judge to be but an officer under o^r^ power, and subject to o^r^ determinations, should have proceeded to have given verdict according to o^r^ consciences, but considering Mr. Child was one of yor Hono^rs^ &ca Grand Councell and not sent hither to reside and assist us here, who though subject to ye laws of England of whom wee are immediate Judges on ye Island, yet not subject to ye necessary processes of law of any inferiour Court to yor Hon &ca Councells: and w^thout^ due and legall proceeding w^t^ desition can be made; y^n^ consequently not in o^r^ power to doe him justice in y^r^ case, so have referred y^m^ to yor Hono^rs^ &ca to make their severall applications as they shall think best." *

We do not know how this matter was decided by the President, and whether the Judge was called upon to pay the penalty of marrying a widow whose former husband left liabilities undischarged.

It has been observed more than once that the English were never very friendly in their relations with the Portuguese. Almost from the day they landed in Bombay disputes arose regarding the possession of certain valuable properties which the Jesuits refused to part with. In 1671, they demanded the warehouse which the English had occupied, but the latter gave them clearly to understand that they would not surrender any ground or house until they had heard from the authorities at home. When the Commissioners were appointed by Gerald Aungier to settle these disputes, the Jesuits refused to abide by their award. This is proved by the following entry in one of the early letters:

"What we wrott concerning the Jesuits pretences we still confirme, and cannot allow of the delivering up their houses untill further order from England. What was surrendered up to other people was on examination and due probation of their titles by the Comss^rs^ authorised to y^t^ purpose, but they refusing to appear before them protesting and appealing home to the Honn^ble^ Comp^a^ for justice, we cannot determine or make any end wth busines. Seeing the first Comission is fallen by

* Forrest's *Selections*, i. p. 126.

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reason of the death and departure of the Commrs nominated, wee shall not trouble ourselves to erect any other Commission to humour the Padrees unreasonable and subtle designes." *

However, the English did not attempt to deprive the Portuguese of any just rights that they could establish.

"For ye thorough ending of ye Jesuits and other pretenders affaires," they again wrote a year after, "wee have drawne up another Commission and appointed new Comissiors (some whereof are in Surat and suddainly shall be dispeeded towards you) in ordr to ye due administration of impartial justice between ye Honble Compa and ye sevll pretendrs to ye seized lands." †

We come across several other similar entries in the early letters, which show that these disputes must have continued long. Here is one, for instance, from a letter written by the Surat Council to Bombay, dated December 18, 1675:

"Wee herewth send you ye Honble Compas Directions touching your regular and legall proceeding in ye lands and estates belonging to Alvaro Pires de Tavora, and reqr you to performe ye same accordingly, except you have reasons sufficient prompting you to ye contrary, wch wee would have you well consider with ye Judge before you begin, and advise us his opinion; and in regard there are sevll pretenders to some pte and stipends out of said estate, vizt Christovar de Souza, and others who have been with us to demand their right, wee would have you cause strict examination to be had of their respective titles, and let ym be proved in ye Compas Court of Judicature in a legall way, and yn see if you doe ym all justice and allow to each person wt of right belongs to ym reserving to ye Companys use wt onely belongs to ye criminall Alvaro Pires De Tavora, in wch be carefull yt you be not abused by ye false suggestions and pretences of ye sevll claimers, but as you are to do ym right and justice, soe be circumspect yt they doe ye Company noe wrong." ‡

A somewhat similar entry appears in a letter dated August 13, 1686:

"As to ye Padres of Bandora and others yt belong to ye Portugall nation," it runs, "notice is given to ye Chiefe Justice, who will take care that noe such estates be any ways alienated; but it will be off ill consequence, for if ye inhabitants of this Island be hindred from attaching

* Forrest's *Selections*, i. p. 58.
† *Ibid.* p. 59. ‡ *Ibid.* pp. 74–75.

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one anothers estates, they will never pay their debts and one will starve ye other; therefore pray y^or^ further directions as to ye inhabitants of ye Island, who are most under ye nomination as Portugueeze. As to ye damages sustained by ye Portugueeze in o^r^ time wee shall take care to give y^or^ Ex^cy^ &ca Acco^tt^, but as for ye time past all y^t^ we can find are in ye Gene^ll^ Bookes wch are att Suratt, and if after a further examination wee find anything material shall advise you thereof." *

The Padres used to give the English much trouble, not only by their licentiousness, but by their attempts to defraud the revenue. In 1686 even the Padre Superior of Bandora was detected in manufacturing salt by stealth and making money by this questionable device. The Bombay Council lodged a complaint against him in the following words:

"The Padre Superior of Bandora in ye time of Mr. Wards being Dep^t^ Govr did make a salt pond out of a ffishing ware called 'Roule' between Sion and Martinga; and ye Corumbeens and Mattreis of Sion, Mahim, Darave, and Martinga, say belongs to ye Rt. Honble Comp^a^, and ye ffish was sent to ye Dep^t^ Govr, and y^t^ it was accustomary for the Dep^t^ Govr to goe and ffish there 2 or 3 times a yeare, and Lewis Cuzado did pay a fellow to looke after it. Upon information whereof there was an action entered against ye Padre, but he refuseth to appeare in Court, and can show noe ord^r^ from Mr. Ward nor none else for said doeing, and we are informed it has yielded 20 Fissales of salt p. annum for these 2 years past." †

If the Portuguese had confined their malpractices to a little salt scraping, all would have been well with them. But their guilt was of a deeper dye, for they did not stop short at shedding human blood, as is evident from the following entry in a letter from Surat to Bombay, dated March 27, 1676:

"Wee are sorry for the death of Serg^t^ Southerland, inhumanly murthered by the Portuguese in cold blood in their owne countryes. Wee require you still to demand satisfaction and Justice for the sayd murther, and send word to the Padre Superiour of the Colledge of Bandora that seeing the said murther was committed in their Jurisdiction we expect Justice from them, for such bloody violencyes cannot be put up without satisfaction." ‡

* Forrest's *Selections*, i. p. 144.
† *Ibid.* p. 143. ‡ *Ibid.* p. 85.

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The Padres were more than once found guilty of being treasonous, and were packed off the island bag and baggage. Even in the famous trial of Rama Kamati, of which we shall speak at some length in a later chapter, their misconduct was brought to light and they had to pay dearly for it. Another cause of friction between the English and the Portuguese was the excessive zeal the latter betrayed in the propagation of their faith. The native fell an easy victim to their proselytism, but they dared not approach the English, and when they did, the result almost invariably proved disastrous to them. For instance, when in 1686, Lieut. Finch, son of Sir Heneage Finch, Attorney-General and Lord Keeper in the reign of James II., and brother of the Earl of Winchelsea, embraced the Roman Catholic faith soon after his arrival in Bombay, the conduct of the Portuguese was regarded as highly suspicious.

"The circumstance," writes Anderson, "was thought to call for the interference of Government. And the Deputy-Governor seized gladly the opportunity of showing that he had once mixed in high society, by stating to his Council that having known Finch's Right Honorable father, and his no less Right Honprable brother, he could assure them that both were steady members of the Church of England. The Council came to the resolution that they would not suffer Lieut. Finch to perform any military duty, for they would not give the charge of the garrison into a man's hands of the Romish religion."*

But the conversion of the next year created still greater sensation in Bombay, and gave rise to all sorts of rumours. Indeed, Government were so alarmed at the prospect of their Protestant servants being reconciled to the Roman Church that they resolved upon enforcing against the offenders the penal statute, 23rd Elizabeth, cap. 1. In this instance, a Portuguese priest, by name John de Gloria, is said to have clandestinely baptized one Nathaneal, son of Lieut. Thorpe, deceased. The over-zealous priest was arrested on a charge of high treason and tried before Mr. Justice Vaux, who had him confined in the common jail. The letter which the Bombay Council wrote, apprising the President of this extraordinary occurrence, is well worth reproducing here. It runs as follows:

* *The English in Western India*, p. 133.

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"May it please your Excell^cy and Councill,

"Since our last here has happened a business of very ill consequence; ye Portugueze Padree of Bombay, by name Ffrea J^no De Gloria, did in his own Parrish Church christen or receive into ye society of ye Romish religion, one Nathanaell Thorpe, sone to Lieut. Thorpe deceased, and ye Padree of his own accord came to ye Deputy-Governour to beg his pardon for makeing a Roman Catholick Christian, but with all confessed that ye said Thorpe did come to him to be made a Christian severall times before he did it, and upon heareing ye same ye said Thorpe was apprehended by ye Deputy-Governour and brought to examination, confessed y^t ye said Padree did tell him it was much better for ye good of his soule to live in ye Roman Catholick religion y^n to live in ye English Church wth many other circumstances and arguments to draw him from his naturall obedience to his King and religion brought up in, which by severall statutes is made high treason, vizt ye 23rd yeare of Eliz^th and ye first Chapter, ye 3d of James and Chapter ye 4th largely treats of ye same, and many more layes down ye hainousness of ye crime and by all judged high treason for any one to perswade or withdraw any subject from their obedience to ye King, or to reconcile them to ye Pope, or to draw them to ye Romish religion for y^t intent, or move y^m to promise obedience to any other State or procure Councill or aid them that doe is Treason. Now may it please your Ex^cy &ca, this being a weighty thing to be considered and much more to be suffered, have legally apprehended ye said Padree and is now in save custody untill your Ex^cys &ca further orders about him. We presume your Ex^cy &ca. will have ye matter stated according to ye Cannons of our Church by our Padrees here and remitt ye same by this conveniency. The Padree was committed prisoner to ye County Goale in ye Bazzar by Judg Vaulk on ye 11th instant and layd in ye room where Mr. Thornburne was, and yesterday by ye earnest intercession of ye Padree of Mahim and a strange Padree ye Deputy-Governour Mr. Stanly and Mr. Jessop ordered him to be removed from ye Common Goale to his own Parrish Church of Bombay, where he is confined with a guard over him to see that he does not escape nor act in ye Church untill your Excellencies pleasure be known what shall be done in this matter; wch with presentation of our most humble service we rest

"Your Excy^s Most Humble Servants,

"JOHN WYBORNE.
"JOHNE VAUXE.
"RICHARD STANLEY.

"BOMBAY, *April* 13*th*, 1687." *

This chapter must be brought to a close, for we have now exhausted almost all the available sources of our information. We wish we could add a few more extracts from the two volumes of Forrest's *Selections*, but even that almost

* Forrest's *Selections*, i. pp. 157–158.

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inexhaustible mine will yield no more treasure. There is, however, one long letter which we are tempted to quote, though it does not relate to the island of Bombay, nor does it throw any more light on the administration of justice by the English during the early part of their career in India. But it shows that there was at least one man among the factors, all of them ignorant alike of the laws of their country and of procedure, who was apparently well acquainted, not only with the statute laws of England, but also with the laws of Oleron, particularly those of Oleron, Wisby, and the Hans towns, as well as with Jure Maritime and Lex Mercatoria. This remarkable individual was one John Leckie, who was serving at the time as surgeon on board an East Indiaman commanded by Captain Edgecombe. It appears that the commander was a man possessed of a very violent temper, and had brutally maltreated the unfortunate surgeon, falsely accusing him of very grave charges and inflicting heavy punishment on him, without even the semblance of a trial or any tangible proof of his guilt. The surgeon's letter was drawn up in the form of a complaint, wherein he enumerated all the charges brought against and the sentences passed on him without any regard to law or justice, at the same time calling upon the Captain to vindicate his conduct in the matter. So serious were the charges, and the punishment inflicted was so cruel, that we might be accused of exaggeration if we omitted to quote the actual contents of this letter. It is dated August 24, 1695, and is addressed to Captain Edgecombe from Gombroon. It opens rather abruptly, as follows:

"The many abuses I have re^{ed} from you, with your unjust, illegall and arbitrary proceedings against me by a pretended power as Capt of an East India ship, hath made me assume the liberty to informe you that your beating me wth your cutlass at Mohilla upon the 15th March, with your beating and wounding me of 19th June, as also beating my servant and barber the same day without any crime, and your making me fast in order to duck me upon the 21st June, which is the next punishment unto death and not to be inflicted without martiall law, after a suffi^{ct} triall and proof of being guilty of some notorious crime; but your accusation proveing false both before your officers and men rendered the ducking odious to them, in so much that they would not obey you notwithstanding your cutlass and threatning, knowing innosence and your justice; your sending your steward to your Cooke, with your order not to let the barber

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or my servant come into the cook roome, and if they come, to take notice that they should not throw any of my powders amongst your victualls; for you did believe yourself poysoned or had gotten a dose already in your water gruell, because for the four days past you was not well nor could not eat: your detaining me as a prisoner on board without letting me know the cause; your keeping and detaining three pints of Cordiall waters on board belonging to me, wch I had presented to Mr. Popham in a small case of his; your hindering me from sending some goods ashoar which I had the Companies liberty for; your denying severall other priviledges that are due to me as Chirurgeon; your threatening me with the law of Olerone, which I presume you have forgotten, or else would not have exceeded them so often as you have done this voyage. S^{r}, you may impose upon some of your officers and sailors who doe not understand them laws; but know that I have read all the marine laws in practice, and p.ticularly those of Olerone Wisby and the Hans townes; with the statute laws appointed by King Charles the Second for the regulateing the Navy Royall, with Jure Maritime and Lex Mercatoria relateing to marine laws; and have read some of the common and statute laws of England; as also of the civill laws upon which both the other depends, and am sensible that your proceedings with me and some others on board are illegal and without a precedent, for no man by the law of Olerone is to be beaten for lyeing on shoar; but his wages are to be deducted for the time, and what damages are sustained by his absence, he is to make good; neither is any man obliged to receive from a Master of a merchant ship any more than one blow and retire, if the Master p.sue him he has liberty to defend himself; all Commission relateing to martiall or marine laws without instructions are void, and all Commissions relateing to marine affairs which are not from the Commissioners of the Admiralty are void by a grant from their Majesties to them, dureing his Majesties continueing them in their office. As for a pretended or assumed power as Capt of an East India man, it is both illegall and arbitrary, and a master of a Collier of 50 tons to Newcastle may assume the same power as legally as an East India man. All this I have concealed hitherto (notwithstanding the just provocations I have had from you to doe otherwise and shall for some time still doe the same) both from your officers and sailors lest it should lessen your and your officers command over your sailors." *

This will be a convenient place to stop and ponder over the contents of the letter. "Chirurgeon" Leckie must have been possessed of wonderful patience to have suffered so much and so long at the hands of a cruel and arbitrary commander. Captain Edgecombe seems to have done everything in his power—and much more that was beyond his legal powers—to make the life of the unfortunate surgeon miserable, and

* Forrest's *Selections*, i. p. 165.

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almost unbearable, during the voyage. Great as is our sympathy for the man, our admiration for the knowledge he displays of almost all the laws then in force is greater still. He lays particular stress on the laws of Oleron, which, it may be noted, were a collection of customs of the sea, and are said to have been put into the form of a Code under the Dukes of Guyenne as early as the twelfth century.* They gradually won their way to general acceptance as the sea-laws of France and England, and indeed of the North Sea and the Atlantic.† Originally framed in Normandy and Brittany as the customs of particular ports, they were recognised in England early in the fourteenth century. Some of these laws, which were written in Gascon, are very curious, and we believe it was Lord Esher who once protested against being asked to attach any authority whatever to a body of law which contained a provision such as the following: "It is established for a costume of the sea that, if a ship is lost by default of the pilot, the mariners, if they please, bring the pilot to the windlass or any other place and cut off his head"; but, adds one authority, "they ought first to know before they do it, if he be able to make amends." It may, however, be observed that this formed no part of the general costumal, but was a special decision in England (*temp.* King John?). The laws derived their name from Oleron, an island on the west coast of France, and the favourite residence of the Dukes of Aquitaine (once Kings of England). Cleriac attributes their compilation to the astute and able Eleanor of Aquitaine, mother of Richard I., who, he tells us, drew them up on her return from the Holy Land. Pardessus thought that the costumal had no special connection with Oleron, but Twiss, with fuller information, holds the contrary opinion. It may be added that, according to some, the Baltic "Laws of Wisby" are the foundation of the Oleron costumal, though Twiss says that the oldest MS. of any sea-laws to be

* *Encyclopædia of the Laws of England*, ix. p. 290.

† *The Black Book of the Admiralty*, ii. p. xlvii, by Sir Travers Twiss. The "Black Book," edited by Twiss, was a reconstruction from the various manuscript fragments (in possession of the British Museum) of the substance of that unique source of mediæval maritime law, then supposed to be irretrievably lost, of which his researches led to the recovery (*Dict. of Nat. Biography*, lvii. p. 394).

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found are the two MSS. preserved at the London Guildhall, containing the "Judgments of the Sea," which are practically identical with the laws of Oleron. "Chirurgeon" Leckie also refers to the laws of the Hans towns. The Hanseatic laws of the sea were collected into a Code in 1591 and revised in 1614. They were, according to Reddie, the best digested collection of the rules of private law affecting maritime commerce.* But this is a digression, though we think it will afford the reader some relief from the harrowing contents of Leckie's letter. After having enumerated the charges, Leckie proceeded to mention some of his past services, put forward certain facts in proof of his innocence, and boldly challenged Captain Edgecombe to prove that he was a rogue. But we must let the surgeon continue in his own quaint style.

"Sr," he goes on, "I have served their Majesties in three severall of their capitall ships as Master Chirurgeon. I have served them also as principall Surgeon to their hospitall at Plymoth and Surrey or over all surgeons of the western ports of England, and likewise I have served as Chirurgeon Generall of their Majesties hospitalls in Flanders, and since as Chirurgeon to his Majesties household, where I was entrusted with his p.son during the time of the engagement against the Ffrench at Landew. I have had betwixt five and six thousand wounded men under my care for cure this war; and have been intrusted with about forty thousand pounds of their Majesties moneys which I did faithfully dispence to the uses I had it for; for all the services I have ample Certificates to show; yet am taxed by you as a rogue and cheat and imbeezler of the medicines belonging to the ships. Therefore to cure you of that jealousie I have here inclosed the list of what medicines were at first in the chest as also what medicines have been expended, which does not vallue of 5 pounds. Your chest and medicines cost £55 and I doe affirme there is not a bad or spoiled medicine amongst them, which by my care I have preserved. Sr, in consideration of the abuses I have received from you, the denying me the priviledges and liberty which all Chirurgeons enjoy, I doe desire you to let me know what my

* *Encyclopædia of the Laws of England*, vi. p. 151. The same writer observes that the laws of the Hans towns "are of such a general, common, and similar nature, as to be applicable to intercourse between the individual inhabitants of different independent countries when at peace with each other, as well as between individuals of one and the same nation. And to this extent the compilation may be viewed as a body of international law for the maritime commercial intercourse of independent nations during peace." —*Maritime International Law*, Edinburgh, 1844.

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crimes are, being hitherto ignorant of them; and if I doe not acquit myself of my accusation and plainly make it appear that your informers are prating and malitious rogues, I will willingly suffer what punishment you will please to inflict upon me, and will publickly beg your pardon with all submission immagineable and true sorrow, if guilty. S^{r}, your complying with this just and modest desire of mine will make me forget all the injuries done to me and re-establish that love and respect which I bore to you before the Mohilla abuses. S^{r}, I humbly beg you to take this into consideration, for if this is not complyed within three days, I will deliver you your keys of your Chest and will act no longer as Chirurgeon of your ship, let the consequences of it be what it will. I therefore desire if you do not come on board yourself, that you would let me come ashoar, that I may prove myselfe either an honest man or a rogue."

Never was a more reasonable request made, nor a more pathetic appeal issued. Whether Captain Edgecombe was as deaf to reason as he was *devoid of* feeling, and whether he went on board or let the petitioner come on shore, we have no means of knowing. We shall conclude this chapter with just one observation, that if John Leckie is to live in history, it will be not through his skill as "Chirurgeon," but through his profound knowledge of the laws of England, martial and mercantile, common and statute, including even the little-known laws of Oleron and those of the Hans towns, as displayed by him in the above letter.

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CHAPTER VIII

THE BARBARITY OF THE AGE

IN a subsequent chapter we propose to collect a few gleanings from an old record of proceedings of the Court of Judicature in Bombay, early in the eighteenth century. These will show how criminal justice was administered by the English at the time, how offenders were tried and punishment was awarded, better, perhaps, than any other chapter in this volume. The fact which will be brought out most prominently there will be the barbarous nature of the punishment inflicted in a majority of cases, and the disproportionately harsh treatment the accused were at times subjected to. We shall also find that the lash was the principal medium of punishment, even in those cases in which, at the present day, justice is considered to be sufficiently vindicated by the imposition of a fine. And its use was not only frequent—it was most cruel. We shall notice, for instance, that in one case a thousand lashes were ordered for an unfortunate offender, and several in which the number ranged from six to eight hundred. Indeed a hundred lashes for an offence such as theft seems to have been regarded as the ordinary scale of punishment. Habitual or incorrigible offenders were sometimes "lashed out of the world into the next," as the phrase described their fate. These may be called "whipping times" in India, just as the sixteenth and seventeenth centuries were characterised as "hanging times" in England and on the Continent. It is hard to believe that even when the eighteenth century had attained its majority, and civilisation was supposed to have made some progress in Bombay, men were sometimes branded on the cheek and women burnt alive for certain heinous offences. One shudders to read that the penalty inflicted on

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women of ill fame who ventured to return on the island after having been once banished consisted in their losing one ear, with the certainty of losing both on the repetition of the offence; that a man who was convicted of subornation and of having signed a false information was condemned to stand in the pillory, then to receive fifty lashes, and afterwards was recommitted to prison during the pleasure of the Court; that for causing grievous hurt another was ordered to receive thirty-nine lashes on three several market-days, then to be burnt on the cheek, and afterwards condemned to hard labour at the breach during pleasure; that—but we might multiply such instances indefinitely. It may be asked, Why were the English in India so cruel in punishing offenders; why, in short, did they imitate savages in their modes of punishment? The answer is, that this was due partly to the barbarity of the age and partly to the semi-civilised state of the country, though it must be admitted that, compared with other nations, the servants of the East India Company were perhaps the most humane in this respect. In proof of this statement let us glance for a moment at the administration of criminal justice in other countries, particularly with regard to the standard and methods of punishment obtaining in them. It will then be found that although India was infected with the barbarity of the age, it did not compare unfavourably even with England, or any other civilised country in the world, and that the infection was perhaps the least noticeable in the town and island of Bombay.

As is well known, the early laws of the Greeks and the Romans were extremely cruel. Gibbon has observed that the laws of the Twelve Tables, like the statutes of Draco, were written in characters of blood. The laws of the Egyptians were equally sanguinary. Here is a choice specimen. "They thrust little pieces of reeds, about a finger's length, into all parts of the bodies of parricides; and then, surrounding them with thorns, set them on fire." The barbarity of the Chinese needs no illustration, for it is witnessed in their daily acts of administration. What shall we say about the early criminal laws of the Hindus? The chief characteristics of their penal code were two—extreme severity and exact retaliation. Having regard to the proverbially mild nature of the Hindus, their laws strike one as peculiarly atrocious. They were also highly

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arbitrary. The punishment inflicted was often fanciful—incredibly cruel for certain offences, for others remarkably lenient. It will be difficult to give even an imperfect idea of the barbarity with which the Hindus of old used to punish criminals, unless we cite certain specific instances.

"Should a wife," says Manu, "proud of her family and the great qualities of her kinsmen, actually violate the duty which she owes to her lord, let the King condemn her to be devoured by dogs in a place much frequented; and let him place the adulterer on an iron bed well heated, under which the executioners shall throw logs continually, till the sinful wretch be there burnt to death." *

Again: "If a woman murders her spiritual guide, or her husband, or her son, the magistrate, having cut off her ears, her nose, her hands, and her lips, shall expose her to be killed by cows." The thief was also punished with undue severity. Here are a few of the different modes of punishment ordained by the famous lawgiver:

"A thief who, by plundering in his own country, spoils the province, the magistrate shall crucify, and confiscate his goods; if he robs in another kingdom, he shall not confiscate his possessions, but shall crucify him. If a man steals any man of a superior caste, the magistrate shall bind the grass *beena* round his body and burn him with fire; if he steals a woman of a superior caste, the magistrate shall cause him to be stretched out upon a hot plate of iron, and, having bound the grass *beena* round his body, shall burn him in the fire. If a man steals an elephant or horse, excellent in all respects, the magistrate shall cut off his hand, and foot, and buttock, and deprive him of life. If a man steals a goat or a sheep, the magistrate shall cut off one of his hands." †

Their method of retaliation was equally barbarous. It was regulated according to the rank and sex of the offender and the person offended against. For instance, the weight of punishment lay heaviest on Sudras and lightest on Brahmins; indeed, the latter seem to have been exempt from all corporal punishments, whatever their crime. There was thus great need of reform in the methods and standards of punishment—if, indeed,

* *Laws of Manu*, chap. viii. 371–372.
Mill's *History of India*, i., bk. ii. chap. iv. p. 177, note.

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the laws of Manu were ever a real code and not merely the exaggerated expression of clerical hatred of sin. But we shall find that the progress of civilisation in India did not humanise the penal laws as rapidly as might have been expected, and that even when the eighteenth century had far advanced, the cruelty which characterises the early laws of this country also marks some of the means employed by the English in suppressing crime and punishing criminals.

We have said above that with regard to the severity of penal laws Bombay did not compare unfavourably with England. The two interesting volumes on *The Law's Lumber-Room*, by Mr. Francis Watt, will bear us out here. Therein Mr. Watt tells us what the law and its ways once were in Great Britain, incidentally referring to the barbarous provisions of some of the early statutes, which may be said to have been written, like the statutes of Draco, in characters of blood. Most of the chapters in the second volume afford gruesome reading, for they graphically describe the fate of those who were hung up at the Tyburn Tree or punished with the cart's-tail and pilloried. In the preface to this volume Mr. Watt observes:

"There is a great deal of hanging in this book: that is only because those were hanging times. The law had no thought of mending the criminal; it ended him in the most summary fashion. The death of the chief actors was as inevitably the finish of the story as it is in a modern French novel."

If instead of "hanging" the term "flogging" were substituted, these observations would fitly describe the mode of administration of criminal justice in Bombay at the close of the seventeenth and commencement of the eighteenth century. We have no space to refer to all the ghastly stories narrated by Mr. Watt; a very few of them, selected at random, must suffice. The execution of Campion and Harte in the reign of Elizabeth and the events that ensued well illustrate the spirit of the age. Campion had been so cruelly racked that he could not hold up his hand to plead at the Tyburn Tree without assistance. Such executions had grown rather fashionable and used to attract large crowds. Many of Campion's disciples stood round him at the fatal moment.

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"They fought for relics," says Mr. Watt, "which the authorities were determined they should not have, so that a young man having dipped his handkerchief in the blood was forthwith arrested. In the confusion some one cut off a finger and conveyed it away."*

The people themselves behaved like savages on such occasions. Nowadays the criminal is hanged with great privacy; it was different then. In 1760, when a member of the peerage was condemned to be hanged, he was carried in state to the Tyburn Tree. Every consideration was paid to his lordship's dignity and feelings. He was permitted to put on his best clothes and driven in a landau drawn by six horses. Even the ordinary criminal was not despatched to the famous Tree with unseemly haste. On his way thither he was given a large bowl of ale to drink and was presented with a huge nosegay. In short, he was the hero of the hour and was despatched in some style. When the Tyburn Tree was demolished in 1783 and the gallows were removed to the front of Newgate, no less an authority than Dr. Johnson denounced the change.

"Executions," he observed quite seriously, "are intended to draw spectators; if they do not draw spectators they lose their reason. The old method was more satisfactory to all parties. The public was gratified by a procession, the criminal was supported by it. Why is all this to be swept away?"

Johnson was probably echoing public feeling at the time. The pillory was another embodiment of the idea that punishment should be as cruel and public as possible. The cruelty practised there was perhaps greater than at Tyburn. We can give only two instances from *The Law's Lumber-Room*. In 1685 the famous Judge Jeffreys, "the bloody Jeffreys,"† sentenced a man to seven years' imprisonment, during which he was ordered to be whipped once a year through every market town in Dorsetshire. "The very clerk of the court," adds Mr. Watt, "was moved to protest that this meant a whipping once a fortnight, but the sentence remained. Out of bravado, or in desperation,

* *The Law's Lumber-Room*, ii. p. 33.

† For an admirable character-sketch of Lord Jeffreys, see Mr. Francis Watt's recent volume, *The Terrors of the Law*. Mr. H. B. Irving, in a clever monograph, does something to rehabilitate Jeffreys.

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the prisoner petitioned the King to be hanged instead of whipped." * It would certainly have been much better for the unfortunate man to be hanged outright than be whipped once a fortnight for a period of seven years. And this is how Mr. Watt describes the second case:

"Quite interesting is the case of Japhet Crook, *alias* Sir Peter Stringer, whose unhappy memory is preserved in some of Pope's most biting lines. In 1731, poor Japhet stood in the Pillory at Charing Cross for forging a deed; when the hangman, dressed like a butcher, 'with a knife like a gardener's pruning-knife, cut off his ears, and with a pair of scissors slit both his nostrils.' The wretched man endured all this with great patience; but at the searing 'the pain was so great that he got up from his chair.'" †

We can well believe the latter statement. If one flies from a chair at the point of a pin, a knife run through the ears and a pair of scissors through the nostrils must have offered Japhet Crook an irresistible temptation to do likewise. Now, what about the lash, which was known in England as "the cart's tail"? We have space to record only one instance, which can hardly fail to raise a shudder. In 1685 the notorious Titus Oates was convicted of perjury and sentenced to stand in the pillory and be whipped at the cart's tail. He seems to have been lashed most cruelly, for it was computed that he received 2,256 strokes with a whip of six thongs, *i.e.*, 13,536 strokes in all. ‡ This appears to be almost incredible, but Mr. Watt vouches for the truth. What is still more incredible is the fact that the wretched man lived to enjoy a pension even after the Revolution. The worst instance of lashing which we have been able to cull from the Bombay records is one in which, in 1779, a general court martial sentenced Robert Butler to 1,000 lashes. There was, however, this difference between the lash in England and the *chawbook* in India—that whereas 13,536 strokes of the former failed to lash Titus Oates out of existence, half a dozen of the latter would effectually despatch the victim to the next world.

Let us now come back to India and inquire into the methods and standards of punishment observed in those parts of the country which were under the absolute sway of native rulers.

* *The Law's Lumber-Room*, ii. p. 59.
† *Ibid.* p. 65. ‡ *Ibid.* p. 64.

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The administration of India by the English in the seventeenth century was both arbitrary and despotic. Public opinion was then an unknown factor in India, and as regards the interest taken by Great Britain in her Indian possessions, it hardly existed even in name. No parliamentary inquiries were held, and the control of the Company over their factors was of the slightest. Notwithstanding this, the despotism of the English seemed almost a blessing compared to that of some native rulers. The former were held accountable to their masters in England: the latter to none. The factors were amenable to a higher tribunal; in Native States there was no tribunal higher than the sovereign. The sovereign's will was law. He could do no wrong, commit no error, transgress no law. He was above all the statutes of the realm. Some of these statutes were but relics of a barbarous age. Their severity had descended from generation to generation, till even in the eighteenth century it was not far removed from the cruelty which generally characterised the laws of Manu. Hamilton seems to have made a careful study of the laws and customs which prevailed in the Native States when he was in India, and his account of them may be relied upon. We shall give two brief extracts from his account, to show that the penal laws enforced by the English, harsh as they were, were humane in comparison with those observed in other places in the East Indies at the time. For instance, speaking of the laws and usages of Aicheen, Hamilton observes:

"No place in the world punishes theft with greater severity than Atcheen, and yet robberies and murders are more frequent there than in any other place. For the first fault, if the theft do not amount to a *tayel* value, it is but the loss of a hand or a foot, and the criminal may choose which he'll part with; and if caught a second time, the same punishment and loss is used, but the third time, or if they steal five *tayel* in value, that crime entitles them to *souling*, or impaling alive. When their hand or foot is to be cut off, they have a block with a broad hatchet fixed in it with the edge upwards, on which the limb is laid, and struck with a wooden mallet till the amputation is made, and they have an hollow *bambow* or Indian cane, ready to put the stump in, and stop'd about with rags or moss, to keep the blood from coming out, and are set in a conspicuous place, for travellers to gaze on, who generally bestow a little spittle in a pot, being what is produced by the mastication of beetle, and that serves them instead of salve to cure their wounds." *

* *A New Account of the East Indies*, ii. p. 109.

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The above extract reads more like a passage from the Chinese Penal Code than from a book giving an account of the East Indies about the end of the seventeenth century. But Aicheen was not the only State notorious for its barbarous modes of punishment; it shared this notoriety with several other Native States, Indian as well as those outside India. There was not much to choose between Siam and Aicheen in this respect. The Siamese had their own ways of punishing criminals, peculiar alike in their novelty and harshness. Says Hamilton:

"In Siam they have several ways in punishing criminals with death; for theft and other such like piccadilloes, beheading is the common way. For rebellion or mutiny, they are rip'd alive, and their guts and intrails are taken out, and their carcases woven up in a twig-case, and tied up to a stake for vultures and other voracious fowls or dogs to feed on. I saw eighteen one morning going to be executed so for mutiny. They were each put up on a triangular seat, with their necks and hands in wooden fetters, and carried by three slaves in chains through the streets to the place of execution, but they look'd as if they had been almost starved in prison, for they were very meagre. Some were weeping, others joyful that they were near the end of a miserable life. For treason and murder the elephant is the executioner. The condemned person is made fast to a stake driven into the ground for the purpose, and the elephant is brought to view him, and goes twice or thrice round him, and when the elephant's keeper speaks to the monstrous executioner, he twines his trunk round the person and stake, and pulling the stake from the ground with great violence, tosses the man and the stake into the air, and in coming down, receives him on his teeth, and shaking him off again, puts one of his forefeet on the carcase, and squeezes it flat." *

We were about to challenge Mr. Watt to show us a mode of punishment in England half as cruel as the *souling* at Aicheen, or the crushing under the elephant's feet in Siam—but we remember the judicial pressings to death and burnings of English practice, and refrain. It must not be supposed that the penal laws alone were harsh; even in certain civil matters the Court was very exacting. Take, for instance, an action for debt and the penalty for its satisfaction. Perhaps the most effective way in which the repayment of debts was enforced was that obtaining in Malabar about the time Hamilton was there. In this connection he observes:

* *A New Account of the East Indies*, ii. p. 180.

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"They have a good way of arresting people for debt, viz., there is a proper person sent with a small stick from the Judge, who is generally a Brahmin, and when that person finds the debtor, he draws a circle round him with that stick and charges him in the King's and Judge's name not to stir out of it till the creditor is satisfied either by payment or surety; and it is no less than death for the debtor to break prison by going out of the circle." *

The modern Shylock may well sigh for a revival of this system! Only one matter remains to be noticed in this connection, and that is the trial by ordeal. There were various kinds of ordeals practised in England, most of them unspeakably cruel in their nature. In India, some at least of the ordeals were positively shocking. For instance, speaking of the laws and customs of Malabar, Hamilton says:

"When criminal cases are brought before the Magistrate, that want the evidence of witnesses to support them, the trial of truth is by ordeal. The accused person is obliged to put his bare head into a pot of boiling oil, and if any blister appears, the party is found guilty; and I have been credibly informed, both by English and Dutch gentlemen, as well as natives, that had seen the trial, that the innocent person has not been in the least affected with the scalding oil, and then the punishment due to the crime is inflicted on the accuser." †

A similar ordeal was in vogue in Pegu at the time, which naturally made people very cautious in bringing false charges. Hamilton describes it as follows:

"Another way they have by driving a stake of wood into a river, and making the accuser and accused take hold of the stake and keep their heads and bodies under water, and he who stays longest under water is the person to be credited, and whosoever is convicted by this trial, either for the crime alleged, or for malicious slander, by accusation, must lie on his back three days and night, with his neck in a pair of stocks, without meat or drink, and fined to boot." ‡

Another cruel practice which has been in vogue for centuries is that of torture. The trial by ordeal is now a relic of the past, though it still lingers in some semi-barbarous countries. But it is no longer recognised as a legal institution and finds no place in the penal laws of civilised nations. On the other hand,

* *A New Account of the East Indies*, i. p. 318.
† *Ibid.* p. 315. ‡ *Ibid.* p. 58.

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torture is still practised, surreptitiously it may be, in the best-regulated countries. But torture, as it is practised to-day, is almost nothing compared to what it was only a couple of centuries ago. In native India it was the embodiment of revolting cruelty. When all efforts failed to compel an accused person to admit his guilt, the judges ordered the execution of what was known as "country justice." It included all those modes of extorting confession which the ingenuity of Oriental rulers had invented instead of the more complex European system of racks, boots, scavengers' daughters, and similar appliances. Some of the methods employed, constituting "country justice," may be enumerated as follows:

"Placing the culprit's head into a bag of cinders; squeezing chillies into his eyes; slitting his nose; half drowning him in a well; preventing him from taking his ordinary sleep; laying him for a night on a bed of thorns; or shaking his infant child before his eyes in a bag with a fierce cat."

It will be conceded that the last method was the most inhuman, as it was the least justifiable! But even in civilised England torture was freely practised, though never legally recognised. "The rack itself," says Hume, "though not admitted in the ordinary execution of justice, was frequently used upon any suspicion, by authority of a warrant from a Secretary or the Privy Council." The East India Company were no strangers to this practice, for we have it on the authority of Mill that they were in the habit of inflicting torture upon their own countrymen, and even their own servants, in India. One of the circumstances which most strongly excited the passions of the English at the time of the Massacre of Amboyna in 1623 was the application of torture by the Dutch.* But, according to Mill, it ill

* The Dutch in India carried torture to as great a degree of barbarity as had ever been attained in the feudal states of Europe. The accounts of the impalements in Batavia are too horrible to be transcribed. Stavorinus, a Dutch Rear-Admiral, was an eye-witness of the frightful tortures which the officers of the Dutch East India Company inflicted at the Cape of Good Hope, then a Dutch settlement. He writes: "Punishments are very severe here, especially with regard to Oriental slaves. In the year 1768 I saw one, who had set a house on fire, broken alive upon the wheel, after the flesh had been torn from his body with red-hot pincers, without his giving any sign of pain during the execution of this barbarous sentence, which lasted full a quarter of an hour" (*The Bombay Quarterly Review*, iii. 1856, p. 51).

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b .glish to protest against the use of a practice which w to them.

"In kingdoms of continental Europe," he writes, "and in Holland s the torture was a common method of extorting evidence from suppo d criminals, and would have been applied by the Dutch judges to their own countrymen. . . . This was an ancient and established law; and as there are scarcely any courses of oppression to which Englishmen cannot submit, and which they will not justify and applaud, provided it has ancient and established law for its support, they ought, of all nations, to have been the most ready to find an excuse and apology for the Dutch."*

Even after making allowance for a certain amount of prejudice in these observations, there can be little doubt that the English were at times guilty of extorting evidence from criminals by means of torture. For instance, in the famous trial of Rama Kamati in 1720, Governor Boone sanctioned the application of torture to a witness who would not give evidence to substantiate the story of the prosecution. And when one of the members of the tribunal strongly protested against a practice which was opposed to the laws of England, and on that ground refrained from taking any further part in the proceedings, his conduct was imputed to baser motives and condemned by the President and Council of Bombay. But, as events proved, Lawrence Parker did not protest in vain, though he was unable to save the unfortunate witness from torture or Rama Kamati from the horrors of the dungeon. Torture flourished in India long after it was unknown in Great Britain, and even in the famous trial of Warren Hastings the second charge against him was that of extortion from the Begums of Oudh by means of torture of their servants. Public opinion has since asserted itself in no uncertain manner, and the practice has been all but discontinued, although we still hear of it occasionally.

When the English first established a factory in Surat at the commencement of the seventeenth century, they had little to learn in the way of judicial administration from the Mahommedan rulers who held sway at the time. It is true that in the seven-

* *History of British India*, i. bk. i. c. ii. p. 38. It is worth remembering that on such matters Mill's testimony was tinged with a certain amount of prejudice and exaggeration.

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teenth and eighteenth centuries both the civil and criminal laws prevailing in France and in other parts of Continental Europe were so harsh, and the principles on which some of these were based so absurd, that, in the opinion of Lecky, the Mahomedan laws and institutions could be favourably compared to them. But when all that can be reasonably urged in favour of the latter has been said, they still remained a bad model for the English to imitate. It certainly did not induce them to be more refined in their morals or more humane in dispensing justice. The will of a Hindu ruler constituted the code of laws in his State, the caprice of a Mahomedan monarch set the whole machinery of judicial administration in motion.

"Neither life," observes Kaye, "nor property was secure under their rule. The Mahommedan conquerors took what they wanted, and executed whom they would. If a merchant possessed gold or jewels, he was careful to hide his wealth. If an artisan was more than commonly ingenious in his craft, he concealed the extent of his skill. It was dangerous to be rich. It was dangerous to be clever. It was dangerous in any way to be a marked man. If the sovereign was accessible to his subjects, so was the executioner. Justice was administered with such extraordinary promptitude, that offenders were hurried into the presence of their Maker almost before they knew that they had committed any offence."*

But if a man lost his head at the bidding of the sovereign, he sometimes managed to save it by the caprice or clemency of the same high authority. Goldsmith's famous line—

"A breath can make them as a breath has made"—

well describes the conditions of life under Moslem rule. The Emperor was obliged to delegate his authority to his subordinates, being himself too occupied with the larger affairs of the State or, as it more frequently happened, with the pleasures of the harem. For instance, the Nazim, or Supreme Magistrate, presided personally at the trial of capital offenders, while the Naib Nazim, or to give his proper title, the Daroga-e Adalat-al-Alica, took cognizance of all quarrels, frays, and

* *Administration of the East India Company*, p. 41.

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disorders, and also of all matters of property excepting claims of land and inheritance. Then there was the Foujdar, who tried all offences not capital, and the Kotwal, who was responsible for the maintenance of peace and order. Such delegated authority, however, was often cruelly abused, and at no time, perhaps, was the abuse more scandalous than at the end of Mahomedan supremacy in India.

"During the closing years of the Moslem rule," says a modern writer,* "the administration of justice greatly deteriorated. The law courts became the engine and instrument of oppression of innocent people. Even the petty Zemindars set up a court of their own. Authority and power were transferred to the hands of military adventurers, who pillaged the rich and the wealthy in order to uphold and maintain their authority. No wonder that the *Ayni-Akbari* and the latest *Fetawi-i-Alemgiri* of the great Emperor Alamgir or Aurangzeb were set at naught. They were of little service then. The canons of justice were enunciated by adventurers, by bandits and robbers." †

The picture is by no means overdrawn. It is similar to the one drawn by us in a previous chapter, while describing the Moslem method of administering justice. For instance, we noticed how Mahmud Begarra used to condemn criminals to death by merely squirting at them the juice of the betel he was in the habit of chewing constantly—a sentence which was executed almost before the fatal juice had had time to dry.‡ We have also referred to the ghastly entertainment at which the Governor of Ahmedabad had invited the English and Dutch directors to witness the summary execution of eight dancing girls because they had refused to appear before him. The host was greatly amused, we are informed, at the consternation with which his European guests were filled by this cruel massacre. Here is another instance recorded by Ibn Batuta, the famous

* Raja Binaya Krishna Deb in *The Early History and Growth of Calcutta.*

† *Ibid.* p. 169.

‡ In this connection it is interesting to note what a Portuguese contemporary of the Sultan, by name Ludovico di Varthema, wrote of him at the time: "Every day he eats poison. Do not imagine, however, that he fills his stomach with it; but he eats a certain quantity, so that when he wishes to destroy any great personage, he makes him come before him stripped and naked, then from a full mouth spurts out spittle upon him, whereby in the space of half an hour the man drops dead."

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Arab traveller, whom Mahommed Taglak made judge at Delhi,* which shows that in point of barbarity the Mahomedans did not yield to any other nation in the world.

"Upon a certain day," he says, "when I myself was present, some men were brought out who had been *accused* of having attempted the life of the Vizier. They were ordered accordingly to be thrown to the elephants, which had been taught to cut their victims to pieces. Their hoofs were cased with sharp iron instruments, and the extremities of these were like knives. On such occasions the elephant driver rode upon them; and when a man was thrown to them, they would wrap their trunk about him, and toss him up, then take him with their teeth and throw him between their fore feet upon the breast. If the order was to cut him to pieces, the elephant would do so with his irons, and then throw the pieces among the assembled multitude; but if the order was to leave him, he would be left lying before the Emperor, until the skin should be taken off and stuffed with hay and the flesh given to the dogs." †

It seems almost superfluous to allude to the cruelty of the earlier Mahomedan rulers at greater length. Their example could not have made the English in Surat or at Bombay more humane in their treatment of criminals.

It should not be inferred from this, however, that the authorities in Bombay alone were harsh in punishing offenders. The standard of punishment was unduly severe in all the factories established in India. For instance, at Fort St. William the natives were flogged mercilessly for even trivial offences. We give below a gruesome little entry which finds a place in the *Selections from Unpublished Records of the Government of Bengal* for the years 1748 to 1767, compiled by the Rev. Mr. Long. About the year 1760, Calcutta was thrown into consternation by some frauds committed during the construction of the new works of Fort William. A Mr. Barton suspected one of his native servants to have divulged certain information to Government in this connection which implicated his father. The supposed informant was not dragged into a court of law, nor was he dismissed from Mr. Barton's service. He was

* Ibn Batuta says that owing to the tyranny of the Emperor, Delhi, when he entered it, was almost a desert. "The greatest city in the world had the fewest inhabitants."

† Kaye's *Administration of the East India Company*, p. 41 (footnote).

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flogged almost to death by his master. The entry, dated June 2nd, runs as follows:

"Mr. Barton laying in wait seized Benautrom Chattogee opposite to the door of Council, and with the assistance of his bearers and two peons tied his hands and feet, swung him upon a bamboo like a hog, carried him to his own house, there with his own hands chawbooked him in the most cruel manner, almost to the deprivation of life; endeavoured to force beef into his mouth, to the irreparable loss of his Brahmin's caste, and all this without giving ear to, or suffering the man to speak in his own defence, or clear up his innocence to him."*

When Barton's conduct in taking the rod of justice into his own hands was denounced, he coolly replied that he had only punished a profligate spy who had aspersed the memory of his father. It would seem that the chawbook was the usual medium of punishment in Calcutta as it was in Bombay and at Madras. We find several instances of flogging in these *Selections*, that of April 5, 1759, being as follows:

"The quorum of Zemindars † lay before the Board their proceedings of the 30th March and 3rd April, in the former of which Ashruff being sentenced to receive one hundred and one lashes every Friday for three months, and Manick Dass the same punishment, the Board confirm the same, and order the sentence to be executed." ‡

We do not know the nature of the offence which merited so many strokes of the chawbook, but we find that when one Edu, a Lascar, had murdered his wife Panchi, he too was awarded a similar punishment. It was represented to the Board in 1760 that as the usual mode of punishing offenders charged with

* *Selections from the Records of the Government of India*, i. p. 214.

† In or about the year 1720, some of the functions of administration were delegated to an officer known as the Zemindar in Calcutta, a post which was generally filled by a member of Council. He had two distinct capacities, for he was both judge and collector. As regards the duties of a Zemindar, Raja Binaya Krishna Deb writes in his recent volume on the *Early History and Growth of Calcutta*: "It is mentioned that the Zemindar tried all criminal cases where the natives did not apply to the English Courts of Justice. He used to decide all suits of any amounts amongst the natives. In cases of capital punishment only he was allowed to give judgment, but only the approbation of the President and Council was taken when the lash was inflicted till death."

‡ *Selections from the Records of the Government of India*, i. p. 178.

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capital crimes in the Zemindary, namely, whipping to death, was not sufficiently public, and consequently not sufficiently deterrent, the form of punishment should be changed into that of blowing from a gun. This suggestion commended itself to the wisdom of the Board, and in 1761 orders were given at Lakhipur "to fire off the mouth of a canon the leader of the thieves who was made prisoner, that others may be deterred." In 1764 a Captain Dow published an order by beat of drum that all "black" servants depending on the English should deliver to him a just and true account of the losses sustained by them in the districts of Rungapore during the late troubles, and that if any persons should give a false account, he would not only prevent their getting restitution, but have their ears and noses cut off, and he also desired the Foujdar would take particular care that they committed no frauds.* The Zemindars often took the law into their own hands, and when someone ventured to sue them in the Mayor's Court, they did not hesitate to inflict corporal punishment on the plaintiff. For instance, when one William Wilson, a sailmaker, brought an action against a member of Council in Calcutta, who also happened to be a Zemindar, for money due for some job done, the defendant, for fear of being publicly exposed, agreed to pay the full amount with costs of the suit in the Mayor's Court. But when the plaintiff's attorney sent his clerk, "a black merchant of Calcutta," to recover the amount, and when the Zemindar found him persistent in his demands, he ordered the said "black" merchant to be seized and carried to his Cutcherry, where he was, without any inquiry, tied up and flogged and beat on his head with his own slippers.† The case of Radachurn Mittre, who was sentenced to be hanged for forgery in 1765, gave rise to considerable indignation at the time. A strong petition of the native inhabitants of Calcutta was presented to Government, praying for the remission of the sentence on the ground of the indictment being defective and the

* *Selections from the Records of the Government of India*, i. p. 398.

† *The Early History and Growth of Calcutta*, by Raja Binaya Krishna Deb, p. 176. The story reminds us of the law-clerk from Edinburgh who ventured into the Highlands to serve a writ. He arrived late at night and was hospitably entertained. In the morning, he saw from his bedroom window something dangling from a tree, and inquired what it was. "Nothing," said the servant, "but a bit messenger body fra' Edinburgh tat had ta [the] impertinence to pring a bit paper to ta laird [chief]." The writ remained unserved.

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trial abortive. The proclamation issued at the time by the Bench of Justices, that English laws were to be extended to natives, had filled the latter with grave apprehension. They protested against this innovation, on the ground of their utter ignorance of the English law, and more particularly as that law made many offences capital which were punishable only with fine according to Hindu law.

"They find themselves," urged the petitioners, "subject to the pains and penalties of laws to which they are utter strangers, and are liable through ignorance unwittingly to incur them. As they are in no ways instructed in those laws, they cannot tell when they transgress them, many things being, it seems, capital by the English Laws, which are only fineable by the laws of your petitioners' forefathers, subject to which they have hitherto been bred, lived and been governed, and that (till very lately) even under the English Flag."*

As a result of this petition, Radachurn Mittre escaped, though narrowly, from being blown from the mouth of a cannon for an offence which, even in its most aggravated form, is punished to-day by transportation for life or imprisonment. But the petitioners do not seem to have gained their main object, namely, exemption from the operation of English laws. The English had a very draconic code in those days, which was ill-suited to the social condition and feelings of Mahomedans and Hindus alike; to have attempted to thrust their laws on the helpless natives and make them feel their terrible significance was as objectionable as it was impolitic. There are instances on record to show that natives of India were hanged for the commission of acts which they believed to be justifiable, if not actually commendable, in the eyes both of God and man. Here is one which Kaye cites in his historical account of the East India Company, on the authority of Governor Verelst:

"In the year 1762 a native detected one of his women in an act of infidelity. Throughout the East women are wholly subject to the will of their masters, and every husband is the avenger of his own wrongs. The man, therefore, satisfied of her guilt, proceeded to punishment by cutting off her nose. He was arraigned at the Calcutta Sessions. He confessed the fact, but urged that he had done nothing to offend the laws and customs in which he had been educated—that the woman was his

* *Selections from the Records of the Government of India*, i. p. 490.

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property, and that by such customs he had a right to set a mark upon her for her infamy—that he had never heard of the laws by which they tried him, but desired to put one question to the Bench: Did they believe that if he had known the punishment to be death, he would ever have committed what they now called a crime? The man, notwithstanding this defence, was condemned and hanged—for if the Court possess jurisdiction, they must proceed according to the English laws."*

Let us now see how criminals fared in Bombay at the hands of the English. The same sanguinary code which governed their penal laws in Calcutta also regulated their treatment of prisoners in Bombay. A serious, but ill-drawn-up charge, a tribunal which was known as the Court of Justice—a misnomer tolerated only by long-established usage—presided over by a person who knew little about the administration of justice and less of law, an occasional application of torture, the confession of the accused with the help of thumb-screws, a few loose and unconnected links of evidence, the verdict of guilty—and you saw the unfortunate creature dangling on the gallows or whipped to death before you had time to ascertain whether he had committed any offence at all, let alone a capital offence. Short shrift was given in those days to the condemned. The quality of mercy in the administration of criminal justice was conspicuous by its absence. Prosecutions were few, persecutions plentiful. Promptitude was the chief concern of the judge. In this the English may be said to have imitated to some extent the procedure of Mahmud Begarra. If a man was found guilty of an offence, he was lashed, or branded, or pilloried without delay. The *chawbook-sowar* was ever ready with his lash, the provost-marshal with the chains. The judge must have been kept too busy in Bombay, about the end of the seventeenth century, to take proper count of those whom he ordered to be executed or whipped. Did we not find Gary, the Company's Judge, summoning a man to appear before him on a Friday, although he had been executed, in conformity with his own orders, on the previous Tuesday? True, this happened only a decade after Bombay was ceded to the Company, but if we are to believe the records, almost the same promptitude in the trial of criminals, the same looseness of procedure and the same harshness of punishment were noticeable more than a century after. For instance, an entry

* *Administration of the East India Company*, p. 324.

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dated April 23, 1799, reads as follows: "This day, Ismai Shaikh, Borah, was convicted of stealing different articles of property of James Morley, Esq., part of which was found in the prisoner's possession. Guilty—Death. On May 9th he was executed, pursuant to the sentence."* If the entry had been undated we might have relegated it to the period when judges like Gary and Vaux presided over the Bench in Bombay; or if the name of the accused and place of trial had not been stated, we might have regarded it as a part of the proceedings of a criminal court in England during the eighteenth century and early nineteenth, when a theft of property worth forty shillings constituted a capital offence. But at the dawn of the nineteenth century, when civilisation was supposed to have made some progress even in India, when the Mayor's Court gave place to the Recorder's Court and a judge of the character and calibre of Sir James Mackintosh was sent out to Bombay to preside over it; when judicial administration was, to a certain extent, purified and penal laws were deprived of much of their harshness, when, in fact, both law and justice were humanised, it is revolting that a native of India, a British subject, should have been condemned to the extreme penalty of the law for an offence punishable under the present Penal Code with a term of imprisonment. But Ismail Shaik was not the only prisoner who fell a victim to the sanguinary provisions of a code which was for long years still to prevail in England, and which might have suited the requirements of South African savages. In 1804 a woman was sentenced to five years' imprisonment for perjury, during which period she was to stand once every year, on the first day of the October sessions, in the pillory, to be placed in front of the Court House, with labels on her breast and back explanatory of her crime. In the same year one Heerjiwan was sentenced to be executed and hung in chains (we know not the nature of his offence), and James Pennico escaped with a light punishment for theft, having been awarded only three months' imprisonment and ordered to be whipped once from the Apollo to the Bazaar Gate.† A couple of years after, a man who stole a watch was sentenced to two years' labour in the Bombay docks, and another was ordered to stand in the pillory before his own

* *Glimpses of Old Bombay and Western India*, by James Douglas, p. 8.
† *Ibid.* p. 8.

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shop in the bazaar. In those days Cross Island must have presented a ghastly spectacle. The pillory and the chawbook were also much in vogue, particularly the latter mode of punishment, which was resorted to very freely. The ordinary punishment for petty thefts and larcenies was whipping, which was inflicted either at a cart's tail as the delinquent was led round the town wall, or else at the public whipping-post before crowds of spectators on a market day. One reason why the lash came to be the usual medium of punishment for every breach of the law was because the ancient Moguls and Nawabs would not permit any of the professors of Islam to be hanged according to the English custom. Hanging was esteemed by them too ignominious a death for a Mahomedan to suffer; consequently, in such cases as were deemed capital, only the lash was permitted to be inflicted, till death, on all of the Mogul's subjects, Mahomedans as well as Gentoos. Though the English method of despatching criminals was more expeditious, it must not be supposed that the lash did its work less effectually. According to Sterndale, the officers of the Court, called the *chawbook-sowars*, or lash-bearers, were so dexterous that two or three strokes of their deadly weapon would speedily launch the victim into the other world.* At Fort St. George there was an additional reason which obliged the English to use the chawbook. There, according to Hamilton, they had no martial law, so they were unable to inflict the penalty of death in any other way than by whipping or starving. There was only one capital offence for which they could hang, and that was piracy. That being so, the widest possible interpretation was given to the word "piracy," and several instances have been recorded in which men were hanged as pirates even for petty offences. Mr. Yale,† the Governor of Madras, is said to have hanged his groom for "riding two or three days' journey off to take the air!" If a person had the misfortune of incurring the displeasure of the President, he was soon found guilty of piracy and hanged.

"If any private trader," says Hamilton, "is injured by the tricks of the Governor, and can find no redress, if the injured person is so bold as to talk of *lex talionis*, he is infallibly declared a pirate."

* *Historical Account of the Calcutta Collectorate.*

† The founder of the famous Yale University.

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In short, piracy in India, like sorcery in old England and conspiracy now, was a convenient crime to fix upon those who could be found guilty of no other.* In Bombay, however, the English were empowered with martial law early in their career. They could hang as well as whip, though in the case of the Mogul's subjects they were obliged to use the lash instead of the gibbet. The chawbook must have rendered them very useful service in checking the growth of lawlessness, which had prevailed in the island for a long time. The punishment of whipping was often accompanied by a term of imprisonment, or branding, or banishment. For instance, one Ignacio de Leviera, a foot soldier, was found guilty of having committed assault on a young Hindu lad, with the object of robbing and the intention of murdering him. The Court felt itself helpless to punish him adequately, a heavy fine and imprisonment being, in its opinion, rendered of no use by his poverty, and submitted the case to the Governor and Council, constituting the Superior Court, for consideration of sentence. Thereupon it was ordered that the accused receive thirty-nine lashes on three several Court days, being tied to the gallows, with a halter about his neck and a paper over his head denoting his crime, and after that he be condemned to hard labour during pleasure, being first branded on the cheek as a public testimony to the infamy of his crime. Another soldier, by name Pereir, was convicted of robbery, and his accomplices, a slave-boy and a Bhandaree, were found guilty of screening him. Pereir was sentenced to receive thirty-nine lashes on three market days, to be burnt on the cheek, and then sent to the breach † to work during pleasure; the slave-boy was awarded fifteen lashes on three market days, and, at his master's request, was ordered to be returned to him; and the Bhandaree was ordered thirty-nine lashes on the public market-place and then

* So, in the history of the Malay Peninsula, "piracy" was so often stretched to cover petty theft on the one hand, and political movements on the other, thereby conferring on Europeans a right of interference which they would not otherwise have had, that Chief Justice Benson observes that the latter were driven to use the quaint term "*bond-fide* pirates" when they referred to real piracy.

† The Breach, or the Great Breach, was the name given to the long causeway which, at the time, kept back the sea from the low lands of Bombay, and continued for many years to be a source of great expense and anxiety to the Government. Criminals were probably condemned to work at the Breach, while it was under construction, during the period of their incarceration.

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discharged after payment of fees. There was also the trial of one Bica, alias Ismaljee, sepoy, who was accused of assaulting his superior, and having been found guilty was sentenced to receive thirty-nine lashes on three several market days, to be burnt on the cheek, and then condemned to hard labour at the breach during pleasure. Subornation was considered so heinous an offence that when one Madon Pilset was convicted of it, he was condemned to stand in the pillory from the hour of eight till nine, then to receive fifty lashes, and finally to be re-committed to prison during the pleasure of the Court. The lash, like the law, was no respecter of sex. A woman named Lacma, who had been previously convicted of petty larcenies, was found guilty of robbing a child, and was condemned to receive thirty-nine lashes in the public bazaar, the same punishment being continued (during pleasure) till she revealed where the jewels were, and after that to be banished from the island. Another woman was sentenced to receive twenty-one lashes for assaulting and cutting open somebody's head with a cleaving-knife. And when Joanna, a Christian woman, who was once banished from the island for conniving at her husband's malpractices, ventured to return to it without leave, a meagre punishment of only fifteen lashes fell to her lot, but on condition that she quitted the island and returned no more, for if she did she would be liable to lose one of her ears, and upon repeating the offence, both. There was another important trial held in the year 1726, the proceedings of which were submitted to the Governor and Council for consideration of an adequate sentence. A sailor named Stanmore was found guilty of very grave misbehaviour towards his captain, and his conduct was held to be so execrable that the judge deemed it necessary to refer the matter to the Superior Court. The latter decreed that the accused should forfeit all his wages on board the ship, that he be publicly whipped on three several days at various gates in the town, that he suffer imprisonment for six months, and be afterwards sent to England on the first opportunity. Here is another curious little extract from the records of the period. A soldier having been found guilty of trying to "spirit away" slaves was ordered to receive thirty-nine lashes on three several Court days, then to work at the breach for a year and a day, and then to be banished from the island of Bombay; and another,

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presumably a Roman Catholic, who was accused of performing some of the idolatrous practices then in vogue among the Gentoos, such as a sacrifice of rice to appease the wrath of an offended deity, was let off with only thirty-nine lashes, to be inflicted during the celebration of Mass, and then handed over to the Padre to suffer the customary Church discipline. We could multiply such instances almost indefinitely, but those cited above amply prove the extreme harshness of the penal laws enforced in Bombay only a couple of centuries ago. There remain two or three minor points which are worth noticing in this connection. In the case of very heinous offences the punishment of whipping was often accompanied either by branding or banishment. And when a prisoner was brought up on a particularly serious charge and found guilty, his case was referred to the Superior Court for exemplary punishment. Then, it will be noticed that the usual number of lashes awarded for ordinary offences was thirty-nine, probably because the Jewish Scriptures prohibited the infliction of a larger number—"lest thy brother should seem vile unto thee." There were apparently no rules regarding the term of imprisonment for various crimes. It was regulated more or less by the whim of the Court. The guilty were kept in durance vile "during pleasure"—a fairly elastic order which was sometimes stretched almost to breaking-point. In concluding this chapter, we shall cite three cases of more than ordinary interest. In 1724 an ignorant woman, named Bastok, was accused of witchcraft and other "diabolical practices." She professed to cure sick persons by the use of charmed rice. The Court found her guilty, not owing to evil intent, but on account of her ignorance, and recorded the following sentence: "That she receive eleven lashes at the church-door, and afterwards she and all persons that are found guilty of the like, do such penance in the church as customary." In 1744 a Hindu woman named Gungy was found guilty of aiding and abetting her paramour in the murder of her husband. She pleaded not guilty, but the Grand Jury convicted her, and she was *sentenced to be burnt*. Lastly, when one Mr. Jenkinson's escritoire had been robbed of fifteen guineas by his slave, with the connivance of his horsekeeper, the wretched Alexander and Fakir Rao, the two persons implicated in the theft, were both sentenced to be hanged.

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Let us now draw a veil over these horrible details, depicting the barbarity of a bygone age. The moral is irresistible. To-day we lead easier lives, and are more just and merciful than our forefathers. The laws are more humane, and punishment is more in conformity with the gravity of the offence. We do not summarily end the lives of criminals; we try to mend them as much as possible. We no longer burn women to death, nor do we whip them. We do not brand men nowadays, nor do we put a halter round their necks. The pillory has become an institution of the past, though torture still lingers. The whip remains with us, because men in authority believe in its deterrent effect; but its use is strictly regulated by statutes, and the provisions of the Whipping Act are most scrupulously observed. The slightest deviation is resented, and not even the highest Court of Judicature in the land can exceed the maximum number of lashes that can be awarded under the Act. In short, the humanity of the age has purged the early criminal laws of their harshness, and we can claim to-day a Penal Code which, in its standard of punishment, will compare favourably with any in the world.

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CHAPTER IX

SOME INTERESTING TRIALS

IN a volume dealing with the history and growth of judicial institutions in early Bombay, it will not be out of place to give a brief account of some interesting trials which were held in this city even before the establishment of the Mayor's Court. This may throw additional light on the administration of justice by the English soon after the Crown ceded its newly-acquired possession to the Company, though before it had the distinction of having a Mayor and nine Aldermen to dispense justice according to the spirit, if not the letter, of the English law. *Causes célèbres* were few and far between in those days, but the few that have been preserved in the official records of the period are most interesting and even instructive. No cases of supreme importance, such as the "Maharaja Libel Case" or the dispute regarding the "Towers of Silence," disturbed the equanimity of Bombay during the early days of British administration, but there were at least two trials which must have caused not a little commotion at the time. We shall find, for instance, that as early as 1669 a Deputy-Governor was put upon his trial for tyranny in the discharge of his official duties, illegal imprisonment of his subordinates, and "openly throwing contempt upon religion." Half a century after, Rama Kamati was tried and found guilty of several very serious charges. His will be the most important trial in this chapter, as it is full of incidents which vividly illustrate the character of judicial administration in Bombay during the first quarter of the eighteenth century. Interesting in its inception, its proceedings increase in interest till, at the final stage, the trial becomes quite dramatic, and the fate of the unfortunate victim excites our sincere sympathy. We shall describe this trial in some detail. We also propose to

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reproduce, more or less fully, the proceedings of another trial which took place in 1726. Its chief interest for us lies in the fact that the record of these proceedings has not been brought to light before, and our object in reproducing it here is to rescue it from pages which are even now crumbling to dust.

(I)

The first important trial—first in point of date and the high position of the accused—was that of Captain Henry Young, Deputy-Governor of Bombay, in 1669. "A drunkard, scoffer, and avowed despiser of the Christian religion," is, as we have noted elsewhere, the scathing verdict which Anderson has recorded of this man. But he was not allowed to scoff long at religion. For, on January 22, 1669, Young was tried by the then Governor and Council, no fewer than twenty different charges having been preferred against him. To enumerate only a few of them, we find that, in the first charge, he was accused of tyranny in the discharge of his official duties, and illegally imprisoning his subordinates. In the second, he was charged with openly throwing contempt upon religion, and declaring that it "was but a State policy to keep men in hand." The third and fourth charges are so extraordinary that Anderson gives them in the prosecutor's own words:

"3rd. That he hath on the Sabbath day hindered the performance of public duty to the God Almighty at the accustomary hour, continuing in drinking of healths, detaining others with him against their wills; and while he drank, in false devotions upon his knee, a health to the Union, in the time appointed for the service belonging to the Lord's Day, the unhappy sequel showed it to be but his projection for a further disunion. "4th. That to the great scandal of the inhabitants of the island, of all the neighbours round about, both papists and others that are idolaters, in dishonour of the sobriety of the Protestant religion, he hath made frequent and long meetings, continuing sometimes till two or three of the clock in the morning, to the neglecting of the service of God in the morning prayers, and the service of the Company hath stood still while he slept, thus perverting, and converting to an ill private use those refreshments intended for the factory in general." *

The last charge against Young was not less extraordinary; he was accused of having threatened to hang the President, no doubt when he was deep in his cups. The details of this trial

* *The English in Western India*, pp. 97–98.

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are, unfortunately, not forthcoming, but Anderson adds that it resulted in an order of the tribunal before whom he was arraigned, that he should be taken on board the Company's ship and sent to England, "but at the same time be treated with as much respect as possible." This injunction was probably due to the deference paid to the high official position the accused was then occupying, but which he so grossly abused. Young's trial must have lasted for several days, and excited considerable interest at the time, as the trial of a Deputy-Governor on such serious charges was not an ordinary occurrence.

(II)

We shall have to leap over quite half a century to come to the trial of the Worshipful Lawrence Parker. In the foregoing trial a Deputy-Governor was arraigned before the Court; in this case the reputation of an Accountant and Chief Justice was at stake. It arose out of a trifling dispute, but the matter soon assumed a very serious aspect, till regular proceedings were instituted against Parker, who was tried by his own colleagues—the Governor and Members of Council—and, after a protracted hearing, was found guilty and deprived of his seat in Council. This event may, therefore, well be characterised as a State Trial in Bombay, which must have excited considerable local interest at the time. It would seem that Lawrence Parker bore a grudge against the then Governor of Bombay, Charles Boone, in connection with some matter which affected private rather than public interests. What these exactly were, it is difficult to say; for the first intimation of the affair that we get from existing records is in the diary for 1720. But the fact remains that there was no love lost between the Governor and the Accountant. Be it said to the credit of the former, however, that, in spite of grave provocation, he had refrained from taking strong measures against Parker, who had grown negligent in the discharge of his duties and disobedient to the orders of his superiors. He went about with an air of defiance, owning no master and caring for none. In short, he behaved in such a manner that Governor Boone was obliged to take some notice of his conduct. Parker was then holding the dual office of Chief Justice and Accountant, but so neglectful was he of his duties

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as Accountant that the General Books of Account were often delayed in transmission to the Court of Directors. The result was that the Board had no opportunity of examining the books before sending them to England, and on at least one such occasion they were despatched home without the Governor and the members of Council affixing their signatures thereto.

"Whereas," wrote the Governor on January 14, 1720, "the R^t Hon'ble Company's Generall Book^s of Accot^s (Letter R) for this Presidency are now sent to the Hon'ble Court of Directors, and go unsigned by me: for my vindication in refusing to sett my hands to them I do assign the following reasons, humbly submitting them to the judgments of my Hon'ble Employers, viz., that tho' Mr. Laurence Parker in the title to the Journall stiles himself Accomp^t and he says the books are kept by him, yet I am of opinion he had little, if any share therein, since he declared in Councill he co^d not keep them and that he had wrote twelve of the Hon'ble Court of Directors to that purport. 2dly: The said books were bro^t in so late (viz. the 13 Inst.) that time would not permitt their examination by the Members of the Board before the dispatch of the ship; therefore I know not what errors may be committed."

The other Councillors were not slow to follow the example set by their Chief, and they refused to sign the books for reasons stated by the Governor. But the way in which Mr. John Braddyll worded his objections is worth noting:

"Whereas the President did not think fitt to sign the Generall Books of Accot^s for that reason only, tho^t it improper being apprehensive (of incurring) his displeasure thereby, tho' at the same time I declare he never (told me that) my signing 'em w^d give him the least disgust: if I have committed (any) mistake therein, I submitt it to the determination of the Hon'ble Court (of Directors)."

Unfortunately, the entry cannot be reproduced *in extenso*, as a part of the page on which it is written is torn away.* As it stands, it is rather ambiguous, but it would seem that if Mr. Braddyll left the Books of Account unsigned, he must have done so very unwillingly. For he had evidently a great regard for Parker and an unbounded faith in his honesty and straightforwardness, which, as we shall see later on, even the unanimous verdict of the Court, eventually condemning the Accountant,

* In this and other entries copied from the diary, wherever it is impossible to decipher words either because they are illegible or because the white ant has eaten through the pages, I have left blank or guessed what I think is the most likely word and put it in brackets.

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did not shake. And when at the end of the trial Parker was suspended from his seat in Council, Braddyll was the only dissentient member who thought the punishment was unduly severe and unjust. But let us not anticipate. Parker had to meet a much more serious charge than that of neglecting the Books of Account. It seems that about a year before he was put on his trial he had, as usual, signed a Committee Report on a matter of some importance, with other members of Council; but disagreeing afterwards with the opinion expressed in it, he not only added a postscript to it, contrary to the terms of the resolution embodied in that report, but had the audacity to erase his own signature from the Consultation of that day. This was a daring act even for a Chief Justice. We find the following minute recorded on this affair in the diary, dated January 25, 1720:

"Whereas Mr. Laurence Parker did erase his name out of the Triplicate of the Consultations for the year 1718 (kept here for a register). In the Consultation of the 3 September relating to the perquisite the R^{t} Hon'ble Company have been pleased to give the Presid^{t} and did refuse to sign the same again (notwithstanding he had signed to two other copys sent home) without he (making) a note that the President's giving up that perquisite to the Company's (serv^{ts}) in Bombay was an Act of Councill, and which he accordingly did do on or about the 18th Instant. The President desires it may be minuted that the same was a voluntary act of his own and no ways relating to the transactions of the Board, as Messrs. Strutt, Braddyll and Brown, the only remaining (members) then of Councill & Mr. Phillipps, Secretary, must know, and for a farther proof he caus'd the foul Minute Book to be laid on the table by which it was evident no such entry had ever been made. The Hon'ble Court of Directors authorising the Councill to settle the quantum to be paid to the President and not to fix it to any particular persons, they having directed it to be paid by all the English in generall who live under their protection. Whereas the making such alterations and additions in the Consultation by any one member of the Board after the same are sign'd by the others, may be of pernicious consequence to the rest on several accot^{s}, order'd that (no) members of Councill presume to make any note, alteration or dissent in the Consultation Book without first making mention of it in Council."

To this minute Lawrence Parker appended the following note by way of explanation and justification of his conduct:

"Laurence Parker desires leave to sign the reasons why he sign'd the Consultations:—They being bro^{t} to the Board in hast I signed upon

honour that business might not be hinder'd, but that kept here having time to read 'em, I found the Company's Servtt not excused paying the 2 P. Cent. perquisite as the Presidt promised standing at the Board, not that he said he would make a minute of it in the Consultations."

Even to us, after the lapse of nearly two centuries, Parker's explanation seems rather weak. The gravamen of the charge lay in the fact that he had erased his own signature without first bringing the fact of his doing so to the notice of the Council, as it was clearly his duty to do. The explanation did not improve his case, for, as the President remarked, it was not only "a wrong state of the case, but likewise a reflection on himself and other members of the Board." Matters of more pressing importance, however, prevented any further notice being taken of this affair, but on the 18th of April Governor Boone drew up a long memorial setting forth, in detail, all the charges brought against Lawrence Parker. Before referring to this memorial let us take a passing notice of another matter which, though it has no direct bearing on this trial, affords an additional proof of the strained relations which then subsisted between the Governor and the Accountant. The entry, dated 30th March, runs as follows:

"The Presidt having taken up some mony of Mr. Parker on the bottom of ship *Boone* Frigat from hence to China and back to this port and Surat, the mony to be paid where she should unload (which happen'd to be Surat) and Mr. Parker refusing to receive it there, which if allowed of might prove of pernicious consequence to those who have taken up large sums on her. The President desired the members of the Board to give in their opinion in writing, whether according to the tenour of the Bond it became due here or at Surat; after they had examined the bond, they were unanimous in their opinions that it ought to be paid in Surat: however, the Presidt, to oblige Mr. Parker, having paid the mony here, directs this entry to be made that it may not be brought as a precedent another time."

In our opinion the significance of this entry lies, not in that it may not be regarded as a precedent, but in the generosity shown by the Governor towards one who had forfeited all claims to it by his unbecoming and persistently rude behaviour. Parker, however, grew still more disrespectful and defiant, till at last the patience of the Governor was exhausted. The

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latter drew up a memorial in which he reviewed the conduct of the Accountant at great length and laid it before the Board. A special meeting was convened on April 13, 1720, to consider what steps should be taken against Parker. Besides the President there were present at this meeting Messrs. Stephen Strutt, Walter Brown, Blackett Midford, John Courtney, and Owen Phillips, both Lawrence Parker and John Braddyll being absent "owing to indisposition." Before considering the various charges enumerated in the memorial the President directed the Secretary to read "the 83 and 85 paragraphs of the Right Honbl[e] Company's Generall Letter p. Stanhope, containing their directions concerning any member that shall incurr the displeasure or cencure of the Board for infidelity, neglect of duty or disobedience." After that the Secretary read the following memorial:

"The late behaviour of Mr. Laurence Parker which is notorious and well known to all but chiefly to you, the Members of this Board, has made it necessary for me to bring his conduct into debate that we may thereupon apply a proper remedy against the evil which otherwise may be justly apprehended from the continuance of such practices. In order, therefore, to set the same in a true light I have collected the following facts, which are now laid before you, and which in my opinion do very much deserve your attention. First and principally as they regard the duty and obligations we lye under to the Rt. Honble Company, and in the next place as they concern every one of us in our private capacitys, but more immediately myself and the authority I have the hon[r] to be invested with, against which I am persuaded many of ( ) were chiefly directed.

"You have been witnesses of his carriage in publick towards myself, even in Council, that it has been with unbecoming freedoms. It must be remembered by many of you the attempts (he made) in opposition to my authority in affairs military, and the frequent opportunitys he has taken to browbeat and discountenance (as much as lay) all those officers and others whom I have thought fitt and necessary to distinguish with any marks of favour.

"The exception he made against my exchangings of old rice out of the R[t] Hon'ble Company's Warehouse for new batty with Messrs. Phillipps and Horne (and which drew on a debate) proceeded from pique, as is manifest from his urging at the Board that I refus'd him like favour when at the same time he excepted against that proceeding under pretence it was prejudiciall to the Company; and that his design (in) making that exception was to bespatter me, I think, is evident from his (accusing) me of drawing up the Resolution of the Committee, that

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was ordered to (be made) into that affair, when in reality it was drawn up by Mr. Walter Brown ( ) the minutes he and Mr. Stephen Strutt took, and which those gentlemen (have more) than once acknowledged, yet he persisted in his assertion altho' he (found) himself in the wrong; my design in desiring Mr. Brown to do it (was) to cover his incapacity and disingenuity, the paper he had drawn (up being) unintelligible and what most of the Committee had refused to sign as ( ) a true state of the case.

"Notwithstanding these provocations, on my perceiving him not so well vers'd in the business of his office as that post required, I did myself, and employ'd others to do, many things which was his province rather than expose him; however, he was so far from taking this as a favour that in Councill, as you may remember, he told me he would not keep the Gen^{ll} Books for three hundred pounds p. annum, alluding as I suppose to my salary; nay, he went yet further and said he could not keep them, and that he (had) signify'd so much to twelve or more of the Hon'ble Directors, (who) in answer had wrote him they did not expect it. And tho' I might blame his conduct to some members of the Board privately, yet I suffer'd it to pass without taking any notice of it in a publick manner, well knowing (it) was my duty to see them done by him or some other, and being ever inclined to indulge him as much as I well could, but that he is not capable of keeping those Books must, I think, appear evident from their being ( ) much behind, and notwithstanding the repeated notice given him (to) lay them before the Board every month pursuant to the R^{t} Hon'ble Company's positive orders, yet he is still very negligent, and doth not give due and necessary attendance at the office.

"The erasing of his name from one of our Consultations near a twelve month after his having signed three copys (two of which were sent home to our Hon'ble Masters), and his making an exceptionable postscript to the Committee's report on the Rice Affair unknown to any of the rest, and after he and they had all signed it, are actions that must (be) condemned by all men of integrity, since they strike at the reputation and estates of those who remain on the Register, for no member of the Board can be safe when any other, after his assent to and joyning in an affair (of) the highest consequence, may upon the ill success thereof take out his (name) or make an addition quite different from the sence and meaning of the Resolution, as Mr. Parker has in this case done and which no excuse can pardon.

"His absenting himself from severall consultations after due summons and not sending his reasons, neither any cause of sickness to ( ), may be justly termed a neglect of his duty, if not a downright contempt. He knows that on such occasions it is customary and expected from every one that he do by message or writing signify a good reason why he cannot (be) present. It must be confess'd, indeed, that on his being summoned to Councill on the late tryall of Rama Camattee for treasonable practices and other high crimes, he did at severall times by notes to the Secretary desire to have his attendance excused, alledging that he

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was out of order, but I have reason to believe (and so have you also) that this was not the real occasion of his absence: it must be therefore imputed to other reasons, his not attending on so extraordinary event as this tryal, in which there is occasion for all the assistance and advice that can be had; and these reasons can be none else but either a carelessness for the R^t^ Hon'ble Company's interest, or an opposition and dislike to the method and manner of our proceeding in that affair. And let it be remembered how he treated the subject in Councill the 28th of last month, the way and manner of making his objections to the validity of his evidences, notwithstanding he heard (us) declare publickly to the prisoner that wee would proceed with all imaginary precaution and tenderness and that no sentence should be pronounced against him unless the proofs of his charge appear'd very plain and clear. The remark that offers on this head is, I think, very materiall, and it is naturally this. Mr. Parker would have it thought that wee were pursuing to distruction a person not culpable, and therefore would not be present with us at the tryal and debates. Now to state the duty of him and every other member aright on this occasion, let it be suppos'd there was cause given for this opinion (which, however, is utterly false and an unworthy insinuation against his fellow-members as well as myself), still it was incumbent on him to have attended and given his opinion, but acting in the manner he has done is a tacit acknowledgment of this (charge) and betrays a want of resolution to act as becomes a ffaithful and diligent servant to the R^t^ Hon'ble Company.

"All these matters as they have a regard to me only in my personal capacity I could now again pass them over, as it is obvious I have formerly done; but when by repeating and aggravating them with the other facts above related, the heinousness of their nature is so considerably augmented, it would have been a fault in me to have defer'd any (longer) making 'em the subject of a Debate in Councill, to which they are now submitted.

"It is to be observed that altho' Mr. Parker wrote the Secretary to acquaint the Board he was out of order, yet he had summon'd a meeting of the Court of Judicature before he knew there was a Consultation called, which the Secretary is directed to take notice of to him and also order'd to send him a copy of the charge and require his answer thereto in writing by Friday morning."

Governor Boone must have been a man of some forensic ability to be able to draw up such a cogent and clearly-worded memorial. With most of the charges enumerated therein we are already familiar, the only serious charge which is new being that in which Lawrence Parker is accused of wilfully absenting himself from several important Consultations of the Board, particularly during the famous trial of Rama Kamati. Of this extraordinary event, which

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had caused the greatest sensation in Bombay at the time, we shall have occasion to speak at some length later in this chapter. Let us only note here Parker's connection with it. Parker had kept away from several adjourned hearings of this trial on plea of illness, but the President was not far wrong in thinking that the illness was, more or less, feigned. It seems that one of the witnesses in this case would not confess what he knew, or rather what he was supposed to have known, about the guilt of the prisoner, till irons were screwed upon his thumbs; and as there was then no other means of extorting evidence from a witness, the Court had sanctioned the use of the torture. To this cruel and illegal procedure Parker took strong exception from the very beginning. He declared, with righteous indignation, that it was against the laws of his country to extort a confession from any man, and this having been done to a servant of Rama Kamati at the trial, he could not "sit there with a safe conscience." We would have been sorely disappointed in the Chief Justice had he acquiesced in a procedure which, even in the eighteenth century, was regarded as barbarous. Considering that torture was abolished in England at the time, it is not easy to understand why Governor Boone and his colleagues sanctioned its application in Bombay. They apparently saw no objection to having a witness's thumbs screwed with iron, and were greatly surprised to find Parker taking exception to their method of obtaining evidence for the prosecution. The President assigned the cause of Parker's absence from the subsequent proceedings of the trial either to his disregard of the Company's interests or "an opposition and dislike to the method and manner of our proceeding in that affair." The Governor also reminded the Council of the assurance given to the prisoner that they would proceed against him with all conceivable precaution and tenderness, and that no sentence would be pronounced unless the proofs of his guilt appeared very plain and clear. Rama Kamati must have wondered at the "precaution and tenderness" the judges showed while screwing the thumbs of one of the prosecution witnesses with irons; and as regards the sentence being pronounced on very plain and clear proofs, it will suffice to state that, some years after the trial, when the condemned man had pined away in prison, it transpired that the treasonous letters he

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was supposed to have written, and on conclusive proof of writing which he was found guilty, were rank forgeries! If Parker's advice had been followed and torture had not been sanctioned, the miscarriage of justice in this, perhaps the first important trial in Bombay, might have been averted. In the light of what is to follow, Parker's conduct as Councillor cannot be said to be above reproach. Indeed, the fact of his having clandestinely erased his own signature from the Minute Book reflects no credit on either his integrity or his judgment. But, by the side of his manly and Englishmanly fight for Rama Kamati, even this grave irregularity may, perhaps, be condoned. His bold resolve not to participate in a trial the proceedings of which were conducted in a manner not approved by the laws of his country excites our admiration. But let us proceed with this *cause célèbre*.

As ordered by the President, the Secretary of the Board wrote the following letter to Parker:

"Worspll S^r—I am order'd by the Presid^t and Councill to send you the enclosed charge which the Presid^t has this day laid before the Board, where he expected you, and the Board were surprized at your absenting y^rrself after you had summoned a Court of Justice to meet this morning at the Fort (which is not an affair of so great importance) and have not given them any notice that you could not attend; and they do require you to give in your answer in writing thereto on Fryday morning next, the 15th Inst., agreable to the R^t Hon'ble Company's directions. I am

"Worspll S^r

"Bombay Castle, "Y^r Most Obed^t Servt

"*April* 18, 1720." "John Horne, Secty.

At the close of this day's Consultation the President put the question to the Board whether Parker ought to be present when the matter concerning him was gone into, and it was unanimously decided that he ought not to be. This little point is worth noting, for though, at the next Consultation, Parker was told that he must not expect to sit at the Board, he insisted upon his right to occupy his seat during the debate and until a vote should be passed for his suspension.

Having regard to the antecedents of Lawrence Parker, his arrogance and hauteur, the grudge he bore to the President and the opportunities he had seized to harass him as much as he could, one would think that he would have shown fight.

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Curiously enough, however, he seems to have felt repentant at his past conduct, for in reply to the Secretary's letter he sent, the next day, a short but most submissive message, as follows: "I do acknowledge myself in fault, and such mistakes as I have made I do promise amendment for the future; therefore, I humbly ask pardon of the Govr & Councill but in particular of the Presid^{t}." Whether it was the Governor's strongly worded memorial or the intercession of his friend, John Braddyll, that induced Parker to tender this apology it is difficult to say. Suffice to add that the apology was unanimously accepted by the Board. One confesses to a feeling almost akin to disappointment that a matter which promised so much excitement at first should have ended so tamely.

But this was only the lull before the storm. For, about a fortnight after, we find the following entry made in a Consultation at which, with other Councillors, Parker was also present:

"Notwithstanding Mr. Laurence Parker by his letter of the 14th Ultimo acknowledged his fault and made his submission to the Board, and promised amendment for the future, yet he positively refused to sign the Consultation relating thereto, when presented by the Secretary. The Presid^{t} said he had summoned this Councill cheifly to require Mr. Parker to give in his answer to the charge he had drawn up against him, his refusall to sign the said Consultation tacitly implying the said charge was groundless. But Mr. Parker having prevented the Presid^{t} by delivering him this morning his answer dated the 15 Ultimo, the same was now read as enter'd hereafter, and the President then informing the Board he had some remarks to make thereon, the further consideration of this affair was defer'd till our next meeting."

From the above it appears that Parker had retracted his admission of guilt and was as defiant as ever. The apology he had tendered, and its subsequent withdrawal, are alike a mystery. What influences had worked on him the records do not say. Parker attempted to meet the charges brought against him by the President with the skill of a trained advocate. His reply, as we shall presently see, was couched in terms of deference mingled with defiance. He admitted himself to be in fault, but with a reservation. "If I have done wrong," he wrote in the course of his reply, "I am ready to ask your Honour's pardon." But we must let the defendant plead for himself:

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"I rec^{d} a paper from Mr. John Horne by y^{r} order dated the 18 April, 1720, and am order'd to make ans^{r} thereto by the 15th inst. (Fryday morning). In obedience to y^{r} commands, I do as follows:

"The Presid^{t} is pleas'd to write I have made attempts in opposition to his authority in affairs military, and to browbeat those officers and others whom he has thought fitt to distinguish, or words to this purpose. To which I answer I never did dispute the Presid^{t}'s authority. The Hon'ble Company's established rules are sufficient for us to go by, from which I hope y^{r} Hon^{r} &ca will never deviate. If you please to remember, you mentioned something of it, and you said it was in the Cape Garden, but I told you I did not remember anything of it, neither do I now. The officers, if any has been uncivil to me, I have complained to you. If any complaint is brought against a soldier, white or black, I tell 'em the Presid^{t} takes notice of such.

"The Rice affair has been examined and gone home to the Comp^{a} on all sides, and I do assure you, gentlemen, I am very innocent and never intended to reflect on the Presid^{t} or any member at the Board. The two acct^{s} being in the office, Mr. Newlin sent to me to know how it should be enter'd, upon which I acquainted the Govr that if any mistake it should be rectified, and what resolution the Committee came to upon examination that the Company were not loosers, I hope will satisfy the Hon'ble Company and y^{r} Hon^{r} &ca Councill, as you have thought fit to leave it to their determination.

"The Books likewise are gone home to the Hon'ble Company with such remarks as you are pleas'd to make for their approbation, and those now about I do assure you (tho' my indisposition has hinder'd my going to the Office) I have sent for everyone in my Office and examined their Journall and Leger once a week, and sometimes in three days; Mr. Newlin is in the Wast Journall, Mr. Sarson to Decem^{r} and posted, and has promis'd to bring 'em up in a month and half, Mr. Salisbury the same; I hope y^{r} Hon^{r} & Councill will not be more strict on me than others has been to my predecessors. If I find anyone neglect his duty, I will acquaint you of it; the Books are ready when you please to order 'em to be called for.

"I told y^{r} Hon^{r} the reason of my erasing my name was that I made a mistake in the objection, but the Consultation was not signed (if you please to ask) not many months before Decr last, for Mr. Phillipps sent the book to my house, and I sign'd all but that one about the two p. cent., and you have thought fitt to send home your remarks, that the Hon'ble Company may be judges of it. If I have done wrong in this or any mistake I have made, I am ready to ask y^{r} Hon^{r} and Councill pardon.

"My absenting myself from Consultations has proceeded from my indisposition, and I always wrote or sent the reason to Mr. Horne, as I did Wednesday last, and have wittness to prove it if requir'd; also my indisposition by the following persons, Mr. Cobbe, Mr. Bendall, Mr. Styles, and Mr. Edlyne. I fully purpos'd on Sunday to go to Church, (but) about Church time I was taken with such a pain as brought me to my bed, and the pain generally takes me in the morning, sometimes it goes off and comes again.

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"As to my summoning a Court, I gave orders the day before, but finding myself the next morning out of order, I designed to send to Mr. Strutt or some other to perform my office, but Mr. Styles coming in told me there was no occasion, because there would be a Consultation. I hope y^r Hon^r & Councill will have regard when it please God to inflict anyone member, to excuse him, and now me, and I do assure you the last time I was in Councill, I had no design but to come at the truth, for one member may have a thought to the purpose of the business before 'em, that a wiser man may pass by. When Rama Comattee complained of his servant being tortur'd for confession, I said it was contrary to law; if I have droped any unwary expression or made any mistake, I hope a pardon, for I do declare I have no design but to lay this before you with all the respect and submission that becomes a member of the Board."

It will be seen from the above that the brave Chief Justice tried to justify his conduct during the trial of Rama Kamati. He admitted that when it was brought to his notice that one of the witnesses was being tortured, he declared such a procedure to be contrary to law. But the rest of his reply does not seem to be equally convincing. He does not fully meet the charge as regards the Rice affair: he only tries to wriggle out of it. He also betrays some animus against the President when, in refuting the charge of opposition to the President's authority in military affairs, he slyly observes: "The Hon'ble Company's established rules are sufficient for us to go by, from which I hope yr Honr &ca will never deviate." Here, Parker had a fling at the President which the latter was not slow to notice. Governor Boone wrote out a long rejoinder, substantiating the charges he had brought against Parker by the depositions of several military officers, and laid it before the Board for consideration on May 5th. All the members of Council were present, including Mr. Parker. But as it was decided at the former Consultation that Parker should not be allowed to be present when the matter concerning him was again under discussion, the President "acquainted Mr. Parker that till he could clear himself of the charge laid against him, he must not expect to sett at the Board, but the Defendant pleading that he had a right to sett in his place during the debates, and until a vote should be passed for his suspension, the President again put the question whether he ought to be admitted, and all the members being unanimous that he ought not to, his plea was rejected, but he was permitted

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to be present in ye room to answer for himself." Before proceeding, let us see what the President had to say to Parker's reply to his memorial. The following observations are recorded in the Minute Book:

"It is observable the answer above-mentioned is dated ye 15 April, but it was not brought before the Board till the 2nd Instant; neither did I know till that time he did intend to make any answer besides the letter of the 14 April which I looked upon (and believe every member of the Board did so to) as an acknowledgment of the truth of that charge, with a promise of amendment for the future, withal requesting (as he had done in private in the most earnest manner) that it might not be proceeded upon any further, which being granted I had reason to hope we should go on with the Publick Affairs w^th^out any more such like interruptions. But I find I was mistaken, for when the Secretary laid the Consultation Book before him last week, he refused to sign that in which the charge and the transactions thereto are enter'd, upon which I judged it necessary to call the Councill of Monday last in order to bring this affair into debate again, and (that) he might be directed to prepare and deliver in his answer, in which he prevented me by bringing it in at that time, when also he affirmed, as you may remember, that he had neither by word of mouth, neither did he intend by his letter aforesaid, to own the charge against him, adding that he knew of no mistake he was guilty of, unless in not giving his attendance at the Board at the Tryal of Rama Comattee and erasing his name from the Consultation,

"In the second paragraph of his answer he denys that he ever did dispute my authority, and then adds: 'The Hon'ble Company's established rules are sufficient for us to go by, from which I hope y^r^ Hon^r^ &ca will never deviate.' I can see no occasion he had for mentioning this clause in his answer, unless it be to insinuate that I was going about to deviate from our Hon'ble Masters' orders, but to make it evident that he had made attempts in opposition to my authority in affairs military, I have selected the following instances which will more fully confirm that part of the charge, but before I proceed to the proof I shall make one necessary remark, viz.:

"Mr. Parker seems to insinuate that I should say his opposition in the military affairs was in the Cape Garden, which is, I confess, somewhat that I cannot comprehend, and he must give me leave to think that he does not himself imagine I could charge him with facts before there could be a possibility of their being committed. What relates to the Cape Garden was thus: I there, to the best of my remembrance, told him I had heard that the differences which had happened on the Island proceeded from the Seconds wresting the Executive Power of the Military Affairs from the Govr, which, as it was an unwarrantable act, was what I should never part with, and such as I hoped he would never attempt. But (what) I intend by the charge is his actually opposing my

authority on this Island, and by browbeating the officers, after my accession to the Government.

"The first attempt whereof was suddenly after my arrival, the exact time I can't remember, but he order'd a Guard on a very trivial acco^{t} from Mahim, Ensign Presly being then the Commanding Officer, which coming to my knowledge, I sent the Ensign off the Main Guard, now Capt Smith, to let him know that I did not approve of weakening the Guard at Mahim upon every frivolous occasion, that petty affairs should be decided by the Cheif of that place, and those of a higher nature I did expect sh^{d} be brought before me. Soon after the return of said Officer, to acquaint me he had del^{d} the message, he enter'd my apartment in company with Messrs. Strutt and Clapham, being a Court day, and after a very haughty manner accosted me to the best of my remembrance in these words: 'Govr Boone, I take it very unkind you should send y^{r} officers to call me fool.' I reply'd I had sent no officer with any such message, and if any person had done so, I wo^{d} punish him according to his demerit. He answer'd Ensign Smith had deliver'd himself so, upon which I order'd him immediately to be called in, and told him the accusation brought against him which he absolutely deny'd, adding that he told his Worship that I would not have persons brought down with a guard upon every frivolous occasion and expected to be acquainted when any such thing was done, which I confirmed to be the orders I gave, and expected sh^{d} be accordingly regarded. After some farther talk wee parted, and as I thought good friends. And to demonstrate my good intentions, I order'd the Ensign to go to him and tell him he was order'd by me on the message, which if it gave him offence, he hoped he would excuse; but he (as the Ensign informed me) took no notice of him; therefore I could esteem the first part of this relation no otherwise than a downright opposition to my authority, and the latter an intent to browbeat an innocent officer (as p. Capt. Smith's relation thereof will appear).

"Not long after this another dispute happen'd concern^{g} the Garrison of Dungaree, the soldiers whereof were order'd frequently to take up Debtors; I then told him I would not permitt it, since there were sepoys or peons sufficient for such occasions, and thereupon forbid all the Garrison Officers receiving any orders from him: however, after some warm words had passed, and his assuring me he had no ill intention and promising to avoid all such occasions for the future, I readily consented to an accommodation, which did not last long. For the Court having passed sentence upon one or more persons to be employed on the Hon'ble Company's works, he caused an order to be drawn out and deliver'd to Major Soddington to send a guard dayly with the said persons to the works, without the least intimation to me contrary to his former promise, and not only so, but Messrs. Strutt and Clapham were also prevailed to sign it. Major Soddington on his receiving it (as he informed me) signified to Mr. Parker that he co^{d} not obey that order without my hand was to it, and that he should be obliged to make it known to me to receive my directions thereupon, which he accordingly per-

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formed, and I having resented it as I thought the nature of the affair required, Messrs. Strutt and Clapham made their excuses in writing, and Mr. Parker came himself, when I had laid before him his breach of promise and the ill consequences such dissentions might produce if he continued to act in that manner.*

"The next time I had occasion to think he had an intention to browbeat the Officers was in a complaint against Major Cornelius Soddington for words which passed at his house, concerning his being advanced to that post, which were of a very trifling nature, and after which the said Soddington affirmed they drank a bottle or two of wine and as he thought were good friends, and added nothing could be more surprizing to him than to be sent for on that occasion and immediately in my presence humbly asked his pardon if he had given offence: this relation may in itself seem to be a matter of no great moment, but will merit a due regard when considering as one of the many occasions he has taken to discourage those Officers I have thought fit to distinguish with any marks of my favour.

"Capt Vane was the next that shared his displeasure in a very remarkable manner, against whom he obliged severall of the natives to sign depositions in English which none of 'em understood, of his having extorted more than his allowed perquisite for modelling their houses, agreable to the proposed streets, as they all declar'd to Mr. Phillipps, then Secretary, who understanding the country language, was order'd by me to examine them, and being now a Member of the Board can relate what is further necessary.

"The beating my servant Omer was an attempt to lessen my authority, and such as few persons in my station would have passed by so easily as I did.

"The dece^{d} Mr. Waters being a dependant on me rec^{d} many marks of his displeasure, which he has often related to some of the acquaintance, and sometimes I have been myself wittness of complaints against him in my private affairs, which have had no just ground: however, this I do not mention, but as it confirms what I have said in respect to his carriage towards those who had any considerable share of my favour.

"Capt. Gordon was very ill treated by him when once sent on a message from me, and Capt. Stanton accused very unjustly of affronting him, which tho' seemingly accomodated, has never been forgot: both of them being on the spot, I desire may be examined.

"The third paragraph in answer to the Rice Affair is I think not at all to the purpose, for he is charged on that head wth making and signing an addition of his own to the report of the Comittee on the same paper, and after he and all the rest of the Comittee had sign'd it, which manner of proceeding may be of dangerous consequence if once admitted or

* The next two lines of this entry are not easily decipherable, but from the context they would seem to run as follows: "On further assurances of his good intentions to prevent any future bickerings, I again dropt the matter, &c."

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brought into custom, but of this he has taken no manner of notice in his said answer.

"That the Books are now pretty near brought up must be owned, but they were very much behind when I gave in the charge of a neglect in that particular, and his behaviour concerning keeping them, I think, may be justly deem'd a disobedience to his superiour.

"His answer for erasing his name from the Consultations is touched very tenderly, tho' I still think it a fault of a very high nature, and is of itself alone sufficient for us to secure ourselves by putting it out of the power of any Member so to impose on us a second time.*

"I must leave it to you whether you think his ans[r] for being so frequently absent from our Consultations, and particularly on the tryall of Rama Comattee, are just and valid. I am very sure I have heard it from severall persons, and from some of you now at the Board, that you have seen him abroad and seemingly well the night before some of those Consultations, and I have had it from a person of good reputation that he was with him one of those mornings of the tryall, and that he was then to appearance very well. To all which I may add the acknowledgment he made at the Board last Councill day in these words: 'I own it was a mistake in me not to attend at the tryall.' And yet he said at his own house to a person from whom I had it again, that he could not be present at the tryall with a safe conscience, or words to that purpose.

"I could innumerate severall other instances of Mr. Parker's misbehaviour towards me, but as what is already said is sufficient to support my charge, I think it needless to add anything further."

Immediately below the President's elaborate observations on the conduct of Lawrence Parker, we find the depositions of Mr. Secretary Phillipps and Captains Gordon, Smith, and Stanton, each of them not only affirming what the Governor had said, but adding something on his own account to prove that Parker had more than once set at nought the President's authority, and, in short, behaved himself in a manner totally unworthy of his high rank and position. It would be too long to set out all these depositions here: we shall briefly note the salient points in them. Owen Phillips was most emphatic in his denial of the blame which Parker had endeavoured to fasten upon him by insinuating that the proceedings in the affair of the consulage was chiefly occasioned "by the backwardness of the Consul-

* The record is again undecipherable at this place (the lower edge of the page having been completely torn away), but the last sentence seems to refer to Parker's insinuation that the Consultation Books having been brought by Mr. Phillipps, the then Secretary, rather late, he signed them in a hurry, overlooking that particular Consultation. To this the Governor replied by merely referring to what Mr. Phillips had to say in his deposition.

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tations." He not only proved that the Consultations were ready in good time, but that there was such a long delay in sending home two fair copies of the proceedings that it did not fairly lie in the mouth of any member to complain that he had no time to peruse them. He further proved that when he sent the third fair copy (which was intended to be kept among the records in Bombay) to Parker for signature, he kept it for months, in spite of repeated reminders, and that when he did return it, he found Mr. Parker's name erased from the Consultations. Captain William Gordon gave a long account of Parker's unseemly behaviour, and specified several instances when he had tried to browbeat him and even his servants. We shall quote one passage from his deposition which shows how rudely Parker used to treat his subordinates at times. It seems that Gordon's slave-boy once committed the offence of going into a tank that belonged to Parker. This annoyed his Worship so much that he sent a sepoy to fetch the offender, that he might punish him in a manner to cure him of his boyish pranks. The latter, however, bolted and hid himself in his master's room. The sepoy thereupon entered the room, but not finding the slave-boy there, went about his business. We must now let Captain Gordon depose for himself:

"Some time after that I came home, when my servants acquainted me with what had passed, and just as they were telling me, the same sepoy was going by the door, whom I called after and asked him why he came into my room in my absence, to take out anything that belonged to me? Upon which he told me his master had sent him to fetch my boy, and then I told him that if ever I found him in my room again, I would send him home earless; then he went and acquainted his Wors^{p}, who immediately sent for me, and I went to him, who asked me why I threatned his servants? I told him the occasion was his being in my room in my absence; he then asked me if I did not think his servant could go into any man's room and take out his slave or any man's servant. I told him I neither knew nor disputed his power, but that I thought it very hard his servant should go to my room in my absence to take away my slave or anything else that belonged to me, especially for such a small fault (if any) as his going into the tank, which twenty horsekeepers and others daily do. His Wors^{p} said all this was very well, but that I might depend of being called to an acco^{t} for it. I told his Wors^{p} that he might do as he pleased, for if I had committed a fault I had no reason to expect any favour from him, for that he had already endeavoured to do me a damage by representing me as a vile fellow to the President, upon which he

called his servants to him and bid them to rem^ber what I said. I told him I had said nothing but the truth and what I should be always ready to say over again. His Worship then in a very slighting manner before all his servants bid me go about my business, so I came away, and told his Worship I thought he did not use me well, and that I could not bear it."

There are two points worth noticing in the above extract. The first is the bold stand made by Captain Gordon against the abuse of authority which was vested in Lawrence Parker as Chief Justice and Accountant of Bombay. There could not have been many Englishmen in this town at the time; but it is pleasant to think that even then there were men who could speak out the truth, regardless of fear or favour, and stick to it, whatever the consequences. Captain Gordon's conduct was marked by a self-restraint that does him great credit. Whilst showing due respect to his superior, he did not forego the dignity that sits so well on a gentleman born and bred. Another point worth noticing is the threat held out by Gordon to Parker's sepoy, that if he found him in his room again he would send him home *earless*. This was not an empty threat: it was sometimes put into execution in those early days. Let us hope, however, Parker's sepoy had his ears spared to him.

Captain William Smith in his deposition bore out the President's allegation against Parker, namely, that without the previous orders of the Governor he (Parker) had employed soldiers in removing *some* debtors from Mahim, though he had sepoys of his own for the purpose. There is not much of interest in this deposition, except that Parker seems to have represented to the Governor that when Smith delivered the latter's message he did so in a tone which was unbecoming a subordinate, and that he even called him (Parker) a fool. Thereupon the Governor called for an explanation, but Captain Smith emphatically repudiated the statement, adding that

"I should have been very impudent indeed, had I been guilty of what Mr. Parker alledged, but did assure his Honour I behaved myself with all imaginable respect in the delivery of the message, and hope his Hon^r would not beleive me capable of being guilty of so much ill manners to the Second of the Island, and that I beleive all the gentlemen upon the Island would do me the justice to inform His Hon^r my behaviour had

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been always contrary to what Mr. Parker had been pleased to accuse me of."

Captain Smith had the satisfaction of knowing that the Governor did not believe him capable of so much incivility, though that fact did not sweeten the latter's relations with "the Second of the Island." The last deposition was that of Captain Jonathan Stanton, sworn at Parel on May 5, 1720. As it is of some interest in this connection, we shall reproduce it below:

"The first complaint Mr. Parker made to y^r Hon^r against me was that I had order'd the Guard at the Bastion to ground their arms and turn their backsides on him, with a design to affront him. The truth of that matter is as follows: I was walking with Lieut. Walker on the Bastian when the Serjeant of the Guard came and told him your Hon^r was coming, upon which Mr. Walker order'd the men to their arms, but the Serjeant immediately afterwards informing him 'twas a false alarm, Lieut. Walker order'd the men to ground their arms and quit 'em, not seeing Mr. Parker till he was on the Battery; however, this complaint was wrong placed, the guard at the time not being under my care.

"Sometime before y^r Hon^r embarked for Surat, I acquainted you of one of my marines being sent to Dungaree by Mr. Parker on suspision of his cutting a cow of Ramajees, upon which y^r Hon^r directed me to wait on Mr. Parker and let him know it was your order that ye man should be deliver'd me; but he then removed him from Dungaree to the main-guard, till y^r Hon^r was gone to Surat, when I again pres'ed that he might be examined, which was accordingly done before Mr. Parker, myself, and severall of the Black Merchants, and tho' not found guilty he was again committed, and tho' I earnestly requested to have the decision of the matter as he was a soldier and under my command, yet he would not admit of no other person to decide the affair but the Veriadores."

The latter paragraph of the above deposition throws a lurid light on the administration of justice in those days, or rather on the way in which justice must have been then administered by the highest judicial functionary in Bombay. The marine who was charged with having killed a cow belonging to Ramajee's (Rama Kamati's, as will be seen hereafter) apparently did not come within the jurisdiction of the tribunal over which Parker presided. Being a soldier, he was amenable to military law, and it was for this reason that Captain Stanton claimed to have him under his command. Not only did Parker exceed his jurisdiction in trying the case, but he had the hardihood to commit

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the accused to prison, though he was actually found *not guilty* by the "black merchants" at the end of his trial. One stands aghast at such flagrant illegality perpetrated by the highest judicial officer in Bombay at the time. Indeed, it is difficult to believe that the councillor, who so vehemently objected to the use of the torture against the unanimous opinion of the tribunal which sealed the fate of Rama Kamati, and the judge who committed the marine to prison though the charge against him was not proven, were one and the same person. But let us proceed.

At the Consultation held on May 5, 1720, the Secretary, Mr. Owen Phillips, read the charge, the President's observations, Parker's answer, and the several depositions referred to above. The Governor then explained to the Board that the person who had informed him about Parker's statement that he could not be present with a clear conscience at the trial of Rama Kamati was Captain Hamilton. Thereupon the latter was called in, and he declared that Mr. Parker did make use of the following words on that occasion: "That it was against the laws of our country to extort a confession from any man, and this having been done to a servant of Rama Comattee on the said Tryall, he could not sett there with a safe conscience." Parker was then summoned before the Board to make his defence. He began by expressing the hope that the President and Council would not be strict with him in their proceedings in this affair, and urged that any person in the term of four years (which term he had served the Right Hon'ble Company) might be guilty of some errors or mistakes, and that it was a hardship on him to have all his bad actions scrutinised, and none of the good ones remembered. Incidentally, Parker had a fling at some of the members of the Board, for he added, laconically, that if other people's actions were as nearly examined, he believed there might be faults found, though he did not think fit to explain himself. The defendant concluded with the observation that he had never been guilty of anything against the Company either by fraud or infidelity, and desired time to draw up a reply to the President's remarks on his answer. He then presented a letter to the President, wherein he endeavoured to justify himself for erasing his name from the Consultations, with a certificate from Mr. John Styles, Register of the Court, stating that Parker had told him that he was out of order on the day on which

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a Court of Justice had been summoned to meet. Parker's letter ran as follows:

"To the Hon'ble Chas Boone, Esqr.
"Presidt & Govr &ca. & Councill.

"Hon'ble Sr & Sirs,—The Presidt on Monday the 2 May, 1720, as wee were all standing at the Board (upon my saying faults or mistakes) asked me what erasing my name out of the Consultation was? I answer'd a mistake. Ah, says he, but if a man erases his name out of a Bond? To which I returned, What, will you make a rogue of me? Withat (*sic*) said, there's no comparison betwixt one and the other; which does occasion me to lay before you, gentlemen, this paper, and sett the reason in a true light, why I did take my name out, as follows:

"Govr Boone did promise, standing at the Board before all the then Councill, that the Company's servants should be excused the 2 P. Cent. perquisite. This he has acknowledged before you, gentlemen, Mr. Strutt and Mr. Braddyll has said the same to you, that the Govr did say that the Company's servants should be excused the 2 P. cent., notwithstands in the Consultations it is worded that all people are to pay the 2 P. Ct. without any exception. The Presidt says he did not say he would minute it, but I thought he would have done it, being agreed on, and urges it was not an act of Councill, but in my opinion it was an act of Councill. The President and Councill standing at the Board, an agreement is as valid, standing as setting, and Mr. John Braddyll told you he expected to have found it minuted. The Consultations were brought to the Board, and in hast to be signed; that business might not be hinder'd I signed upon honour, beleiving everything was enter'd as agreed on. But when I came to sign that which remains in the Secretary's Office, and time to read it, I found the Company's servants not excus'd the 2 P. Cent., but liable to pay as any other person or persons, upon which I told Mr. Strutt and Mr. Braddyll, who said they had not seen it. I told the President of it, which he has acknowledged I did. I signed my name with an objection, but made a mistake, for which reason I erased my name and my objection fair, as may be seen in the Consultation Book. I signed two of the same which are gone home, and a third remains here with my objection as follows:

"'Laurence Parker declares to the best of his memory that it was agreed in Councill that the Company's servants of Bombay and Surat were not to pay any perquisite of 2 P. Cent. to the President.'

"This can never be accounted to me a crime by the Hon'ble Company, but a part of my duty, and I hope on due consideration, you'll have great regard to my reputation, being the most valuable of anything in this world.

"The President was pleased to say he thought I would have signed what he accuses me of in the paper called an Enquiry into my behaviour; give me leave to tell you as it's gone home to our Hon'ble Masters, it's my opinion you wait to hear whether they approve or

disapprove, whom they blame and whom not; this is agreeable to their standing order, as P. Gen[l] Letter P. Stanhope, paragraph 83.

"I desire my witnesses may be called to prove my indisposition, and that the Letter Book to Surat may be produced for the year 1718, September or October: I have something to offer farther. I am,

"Hon'ble Sir & Sirs,

"Y[r] Most Obed[t] & Hu[m] Serv[t],

"LAWRENCE PARKER.

"BOMBAY, *May* 5, 1720."

To this letter was appended the certificate from Mr. John Styles, the then Register of the Court, in proof of Parker's alleged indisposition. The President had pointed out in his charge that, in his opinion, this indisposition was merely an excuse set forth by Parker to account for his absence, on April 13th, from the trial of Rama Kamati, because on that very day Parker had summoned a Court in his capacity as Chief Justice. But Mr. Styles's deposition was designed to show that the illness was not feigned. The certificate was couched in the following terms:

"Upon summoning a Court the 20 April, 1720, to be holden the next morning in Bombay Castle, by order of the Worsp[ll] Laurence Parker, Esqr., Cheif Justice, I do declare that (on the 18 when I entered his door) he told me he was just going to send for me, and that he design'd to send to Mr. Stephen Strutt to perform his Office, being out of order; to which I answer'd there was no occasion, because there would be a Consultation."

After hearing what Parker had to say in justification of his conduct, and after perusing his letter and the Register's deposition, the defendant was ordered to withdraw. A new element of some dramatic interest was then introduced into this affair. The President drew the Board's attention to the fact that part of the last line of the letter just delivered by the defendant was fresh blotted out with a pen, but that the words "prove against the Presiden[t]" immediately after the words "I have something to" might be plainly read therein. Parker was thereupon ordered to be called in and required to explain the meaning of these words: he was at the same time told that if he had anything to object to against the President he should do so then and there. Parker replied that it was a mistake of

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the copyist and not done through design or with his knowledge, all that he intended being the words "offer farther," the words immediately preceding being "I have something to." Parker's explanation was evidently accepted by the Board, but having regard to his past relations with the President, it seems rather lame, for how did the copyist substitute the totally different words "prove against the President" for the words "offer farther"?

Parker having again withdrawn from the Consultation, the President summed up the material points in the case. We have already referred to Mr. Braddyll's advocacy of Parker's cause. Braddyll gave a further proof of it at this stage of the proceedings.

"As he (the President)," runs the entry in the diary, "touched on the article relating to Parker's proceeding against Capt. Vane, Mr. Braddyll said that severall of the inhabitants had complained to him of Capt. Vane's taking mony of them for liberty to build their houses, whom he order'd to go to Mr. Parker and beleived Mr. Parker had acquainted the Govr thereof, which was the only reason why he himself did not, which Mr. Parker desired might be minuted."

We suppose bribery was a plant which throve exceedingly well on the virgin soil of Bombay in those days, though it is due to Captain Vane to say that the charge brought against him by Braddyll was afterwards held not proved. The President then proceeded with the summing up, and at its close put the question whether Mr. Parker's request for time to draw up a reply to his remarks should be granted. The question having been answered in the affirmative, the defendant was called in and told that he should prepare and submit his reply, and whatever else he may have to offer, the next day, and also to bring "what evidences and witnesses he thought requisite for his defence."

This affair was now dignified into a regular trial of the Worshipful Lawrence Parker, Accountant and Chief Justice of Bombay, before the Governor and Council, constituting, at the time, the highest tribunal on the island. Though the inquiry was mainly directed to the establishment of the charge as to whether Parker was really indisposed on the day on which

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Rama Kamati's trial was to be continued, other matters were also gone into, for instance, Parker's neglect of his duties as Accountant. The first witness who came forward to prove the indisposition was Dr. Cobbe, the reverend gentleman who has been already introduced to the reader. He was called in and told by the President that Mr. Parker, being accused of absenting himself from attending certain Consultations, had brought him as witness to prove that he was indisposed, and that he was therefore required to declare what he knew of the matter in answer to the following questions:

"*Q.* Do you know Mr. Parker was so indispos'd as that he could not attend the publick business for the term of 5 weeks, which was the time of the Tryall of Rama Comattee, and some days preceeding?

"*A.* I know he was indisposed and that he took physick on them and do beleive it would not have been safe for him to have attended.

"*Q.* Do you know whether Mr. Parker went abroad or kept house during the term aforesaid?

"*A.* According to what I know he kept house; I can't be certain as to the exact time, but know it to be some days, and I beleive weeks."

Dr. Cobbe having withdrawn, Mr. Bendall was called in, and the same questions were put to him with, more or less, the same replies. All the information elicited from him was that on a particular day "three weeks ago" Parker was so ill that "he was setting in his chair." The next witness was one Mr. Edlyne, who gave the following interesting evidence on being interrogated by the Governor:

"*Q.* When you came to me with the first paper, what did I say to you?

"*A.* Your Hon^{r} said that paper was not sufficient.

"*Q.* Did not I tell you that Mr. Parker must acknowledge his conduct faulty, promise amendment for the future, and ask pardon of the Board, and me in particular?

"*A.* I do not remember the latter part of the Querie, but to the best of my remembrance I did not hear y^{r} Hon^{r} say you expected Mr. Parker sho^{d} acknowledge his conduct faulty.

"*Q.* What did I say to you?

"*A.* Your Hon^{r} said you was the person injured and you expecte

Mr. Parker should make his submission to the Board, and you in particular, and promise amendment for the future."

It is difficult to say what paper this witness was referring to, which his Honour said was not sufficient; perhaps it was an apology tendered by Parker. Mr. Edlyne further deposed that he was certain Parker was indisposed and that physic was several times prepared for him during Rama Kamati's trial, though he did not see him take it. But when he was asked by the President if he thought Parker was so much indisposed, throughout the trial, that he could not attend, Edlyne gave the evasive reply, "I know one day particularly he took physick."

The examination of other witnesses was continued the next day (May 6th). The members of the Board waited some time for Mr. Parker, but he did not attend this day's Consultation. He sent in a long reply to the President's observations on his conduct, and added a postscript to it, desiring to be excused from attending the meeting, as he found himself much out of order. He also enclosed a declaration from a Mr. Salisbury, to prove his efficiency and diligence as Accountant. Both the reply and the declaration were read before the Board and entered at the end of the Consultation. Before reviewing the additional evidence, let us cast a glance at Parker's reply. It runs as follows:

"To the Hon'ble Charles Boone, Esqr.
"Presid[t] & Gov[r] &ca Councill.

"Hon'ble S[R] & Sirs,—Yesterday about six or seven a clock I rec[d] the President's remarks on my answer to the charge del[d] by the Presid[t] to which I desire leave to answer as follows.

"My answer dated the 15th April was not del[d] before the Board till the 2nd Instant, tho' I had a rough draft drawn out then, for this reason; I thought my submission being accepted, you would not have caused yours to be enter'd, but to be satisfyed I wrote you the following letter:

"'Hon'ble [R],—I desire the words ill conduct may be altered (in the Minutes of Thursday last, and that the words may not (exceed my) mistakes, for I take the former to reflect on my life and conversation (which) I venture to say has been as innocent as most mens; and ( ) means can I sign that Consultation without some objection, which cause

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some difference betwixt you and me, but I hope the promises (you) made me of ffriendship upon my submission will prevail, I thought (you) wo[d] not have minuted it one way or other: I am

"'Hon'ble S[r],

"'Y[r] Most Obed[t] Serv[t]

"'LAU. PARKER.

"'BOMBAY, 16 *April*, 1720.'*

"By this I gave the Presid[t] to understand I could (not) sign the paper called an enquiry into my behaviour, or the Consultation.

"In answer to the first proof relating to Cap[t] Smith almost four years since. I did as my predecessors had done. (Accused) was brought before me and they told me 'twas customary for the Second on such occasions to order a guard. I asked Mr. Bernard Wyche (that) night before Mr. John Braddyll: he said in Mr. Aislabie's time it was customary, and that he has order'd a guard on any (many?) occasions. (Where) there is no law, there is no transgression. Capt. Smith came to the office and told me from you I must not send on such frivolous and ( ) occasions, upon which I told you I took it unkindly, and as I (was) going downstairs, he beged my pardon, and the man was always civil to me since, and I paid him the same in his place, and I (told him) that I forgave him. Why sho[d] I not, if you sent him or he made a mistake?

"Now I rec[d] your orders that I should not meddle with the soldiers, and to the best of my remembrance is two or three years since which I have observed, but give me leave, Sirs, to say any man might have done the same, it being customary for the Second to have that power in Mr. Aislabie's time. I don't remember you told me in the Cape Garden what you are pleas'd to mention.

"Mr. Cornelius Soddington is dead and was my friend, and I his, he left my first child one hundred pounds.

"The people complained of Capt. Vane's taking mony from them, and I had two interpreters: my servants asked 'em one by one how much he took, I wrote it down, they signed to the truth of what they said to my servants, and I sent their complaint to your Hon[r], thinking you knew nothing of it. You sent for me and told me you had ordered him five perdoes, but I said, S[r], you did not order him to twenty, you said, No. Y[r] Hon[r] has the papers, please to let 'em be enter'd, for I do assure you I obliged no man, and thank God I have not that to answer for. Mr. Braddyll told you yesterday in Councill the people did complain to him of the above, w[ch] I hope is minuted for my justification.

"Capt. Gordon was uncivil to me in my own house and I bid him to go out of it. As to Capt. Stanton I owe him no ill-will, he being always

* The words in brackets are those which, being written on the margin of the page, cannot be deciphered in the original. There is only one word I have not been able to hit upon, as the sentence itself is rather ambiguous. The MS. copy for 1720 is much damaged.

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civil to me ever since the people grounded their arms, being told of it, I suppose, by the President.

"Omer, your Honr's servant, told me at my table before Messrs. Clapham, Brown and Wyche that he had beat my servant and sent him to me. I said, Did you so? Yes, S^r, says he; I hit him a box or two and bid him go out of the house. The gentlemen at that time said he deserved it, but y^r Hon^r made me beg pardon, by shewing your resentment. Mr. Waters is dead.

"I thought there was no occasion to mention the postcript about the rice [affair], the reason being gone home to our Hon'ble Masters, of which you have a copy. However, the reason was, in my opinion, what was drawn up was not a true state of the case without it; I sent it to Mr. Strutt but he did not sign it, whether my servant carryed it to anybody else, I can't tell.

"I have been all along diligent in taking care the Generall Books sho'd be kept up, but after ballancing they are generally a month or more behind, the hurry at the time of shipping has been the cause, and everyone has something to do for Europe, but now they are up, I hope will please [y^r Hon^r]. I have brought witnesses to prove I have given due attendance at the Office, and when I was out of order sent for their Books to my house.

"I gave in my reason yesterday why I did erase my name and wrote it again, with the objection, which I hope will prove satisfactory.

"Yesterday those gentlemen that appear'd before you and gave an acco^t of my indisposition, I hope will be sufficient. I might say I could not be at the tryall with a safe conscience, if I did not speak my opinion, and I think on such occasions (as I could not talk, especially in a morning) was better for me to keep at home in order to recover.

"Y^r Hon^r being at Surat, the Black Soldier you was pleased to mention yesterday, Antonio D'Costa. . . . The occasion of the Veriadores examining the soldier was at Rama Comattee's request, they understanding the language, and they laid it before me. Upon my examination whether the soldier cut the cow or not, they not bringing sufficient proof, he was order'd by me to prison again. Rama Comattee said he could get some further proof against him on a second or third examination by me; sufficient proof not appearing against him I order'd him to be clear'd, to the truth of the above I have brought five witnesses.

"The foregoing, I hope, will have y^r Hon^rs &ca. approbation to whom I submitt with all due respect, I am,

"Hon'ble Sir & Sirs,

"Y^r Most Obed^t & Humble Servant,

"BOMBAY, 6 *May*, 1720. "LAURENCE PARKER.

"P.S.—Since dinner I find myself so much out of order I can't give that attendance I could wish, and desire to be excus'd. Inclosed comes Mr. Salisbury's declaration wch please to order may be enter'd with Mr. Styles's [sent] yesterday Idem. L.P."

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The declaration referred to by Parker is entered in the Consultation as follows:

"I do declare that when Mr. Parker was indisposed, he constantly sent to me once a week, and often times once in three days, to bring him the Generall Books (which I am copying fair) for his perusall; also, that he gave due attendance at the Office when well.

"JAMES SALISBURY."

After the reply and the declaration were read and recorded two additional witnesses on behalf of Parker were called in and examined. They deposed not only to the indisposition of the defendant, but also to the diligence with which he attended to his duties as Accountant. The first of these was Mr. Newlin, who was interrogated as follows:

"*Q.* (1) Did Mr. Parker keep the Wast Book of the Generall Books, or did he ever give directions for making the entrys?

"*A.* I kept the Wast Books myself; in cases where I was dubious I have asked Mr. Parker.

"*Q.* (2) What did he do towards forwarding the Books and keeping them up when he came to the office?

"*A.* Pressing people continually to be in the office to do the business.

"*Q.* (3) Doe you know whether Mr. Parker was ill during the Tryal of Rama Comattee or for three weeks before?

"*A.* That I cannot say, but I know he has been out of order.

"*Q.* (4) Did you ever visit him in the morning or afternoon during that time?

"*A.* I have visited him in the afternoon during that time.

"*Q.* (5) Did he then keep his bed, or was he dress'd, or walking or setting?

"*A.* He was walking.

"*Q.* (6) Did he appear to you then so ill as not to be able to go abroad and attend publick business?

"*A.* He complained he was out of order.

"*Q.* (7) Did he attend the office or ever come there in that space of time, which was about five weeks?

"*A.* I am not certain whether he did or not.

"*Q.* (8) What Physician or Surgeon did he make use of?

"*A.* I don't know.

"*Q.* (9) Doe you know whether he went abroad or no in that time?

"*A.* I can't say whether he did or not.

"*Q.* (10) Do you think ye Books were kept behind hand for want of Mr. Parker's attendance?

"*A.* No.

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"*Q.* (11) What was the reason they were kept so long behind hand?
"*A.* My own indisposition."

This concluded Mr. Newlin's evidence. It improved the case for the defence, though some of the answers given were rather evasive. The last answer does credit to Mr. Newlin's loyalty to his chief, for he takes upon himself the responsibility for the delay in preparing the General Books of Account. The next, and the last, witness was Mr. Sarson, who was asked the very same questions, and his answers have been noted *seriatim* in the diary as follows:

"*A.* (1) To which he answer'd Mr. Parker did not keep the Books but gave directions when any new entrys were made.
"*A.* (2) He never did anything to the Books, but when he came to the Office, he used to bid us mind our business, and be carefull to bring up the Books, and when he was out of order, he used to send for me and Mr. Salisbury once a week or more.
"*A.* (3) No farther than that I have heard Mr. Parker say he was out of order, and could not attend the office.
"*A.* (4) No, never, but when he sent for me.
"*A.* (5) He was in the Accompting house, sometimes walking, sometimes setting.
"*A.* (6) He seemed to be out of order, but I can't judge whether he was so bad that he could not attend the publick business.
"*A.* (7) No, I don't remember he was once there.
"*A.* (8) I don't know.
"*A.* (9) Yes, I have seen him walking at his door sometime of an evening.
"*A.* (10) No.
"*A.* (11) It was very late before the Books were begun, and the Subordinate Ffactory Books being to adjust, together with Mr. Newlin's and my own illness, was the occasion."

This closed the case for the defence. Mr. Sarson having been ordered to withdraw, a paragraph from the General Letter of Surat, giving directions about the collection of Consulage (to which Mr. Parker had so strongly objected), was then read and recorded as follows:

"Paragraph of a Letter to Surat dated Sepr 8, 1718, relating to collecting the Consulage, viz.:
"The R^{t} Hon'ble Company having in their letters to us [by] these ships been pleased to give the Presid^{t} an allowance of Consulage on all

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goods of English merchants living under their protection in India, imported or exported at Bombay or Surat, to be settled at the rate we should agree on here, Wee have fixed it at 2 P.Ct. and do direct that Mr. John Hope collect the same according to the orders that shall be given by [to ?] him by the President, on all English goods excepting those of the Company's servants residing at Bombay and Surat, which the Presid[t] lays no claim to."

Then the President summed up the evidence on both sides, much in the same way as the judge sums up to the jury at the present day. In the course of the summing up, the President observed:

"Gentlemen: Wee are got through the examination of the charge against Mr. Parker, and his answer thereto, and have fully heard the witnesses on both sides and everything which Mr. Parker has offer'd. It remains that we now come to a resolution, but before the question is put I think it proper to make some observations on the evidence given by Mr. Cobbe and the others. He was asked, as you may remember (and will see by yesterday's minutes), whether he knew Mr. Parker was so much indisposed as that he could not attend the publick business and whether he went abroad or kept house for the term of five weeks, which was the time of the late Tryal of Rama Comattee and some days preceeding. To which he answer'd he knew Mr. Parker was indisposed, for some of those days he is certain, and beleives weeks, and took physick for it, and thinks it would not have been safe for him to have attended. This question was repeated to him and he repeated his answer in the same words, or to the same effect: and yet you have heard Mr. Parker himself own that though he was out of order, nevertheless he went abroad severall of the evenings of those days, and was not confined to his bed by his illness, nor had any physician to attend him, except his wife,* and that he could . . . have come to our Consultations, and sat and heard the Tryall or other business, for all his indisposition which cheifly affected him in the use of his speech, for (said he yesterday) 'I could have come to the Tryall but I could only have sat there, I could not then have spoken twenty words.' All that Mr. Bendall says (who also was brought as a wittness of Mr. Parker's indisposition), is that he heard him complain of being out of order at severall times in the five weeks' space aforementioned, and particularly one day (he thinks it was last month, was three weeks) Mr. Parker was so much indisposed that he could not speak to him. Mr. Edlyne says that during the time abovementioned he knew that physick had been prepared for Mr. Parker, who complained of being out of order, altho' he used sometimes to go abroad in the evenings. I must not pass over this head without remarking to you the

* We do not remember Parker saying this, at any rate, if he did, it does not seem to have been recorded in the diary.

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disesteem that such opposition naturally creates in the minds of all the people about. I have been told by some of the Black People that it is commonly spoke among them that Mr. Parker and I were at variance, and that 'twas thought he would be for Rama Comattee.

"The other witnesses offered by Mr. Parker are Mr. Newlin and Mr. Sarson, both clerks in the Accomptant's Office; them he brings to prove that he gave due attendance at the Office in bringing up the books. It is certain they, not Mr. Parker, have been cheifly instrumentall in that business, Mr. Newlin in making the entrys and Mr. Sarson in copying fair, but even now the books are not up, according to the R^t Hon'ble Company's orders in the 6th paragraph of their letter of June, 1703, which positively directs they shall never be a week behind unposted upon any pretence whatsoever, notwithstanding which they are still near five months unposted.

"Another matter of moment I will just remind you of is that Mr. Parker not only owns that he erased his name from the Consultations and added the postcript on the Rice Affair, but even defends and vindicates himself for it, which I think is very extraordinary and leaves us without any hope of his amendment in this particular especially.

"I expected Mr. Parker here according to our order but he has excused himself and sent his reply to my remarks on his answer, which you have now heard read, and to which I shall make answer as follows: Mr. Courtney, who was formerly Cheif of Mahim, says he never knew the Second had that power or did order a guard from Mahim with prisoners or any other occasion without the knowledge of the Govr, and Mr. Horne confirms the same; but Mr. Midford says when he was Capt. of Mahim Fort he has done it by Mr. Wyche's order in Mr. Aislaby's time, but does not say whether 'twas with or without the Generall's knowledge. To what Mr. Parker says farther in his defence against that charge I observe that tho' Mr. Parker might do it once through ignorance (which in my opinion he could not), I haveing positively told him at the Cape in discourse on that subject, I would not suffer such practices, yet he could have no other view in repeating those actions than opposing my authority.

"To what Mr. Parker says relating to Capt. Gordon's behaviour, I must remark that had he given unseemly language to Mr. Parker in delivering my message, he ought to have complained to me of the affront and not resented it in the manner he did.

"And the same remark also serves to what Mr. Parker alledges in his defence for beating my servant Omer.

"Mr. Parker's remark about his adding a postscript to the report of the Committee about the rice affair is not right, that not being the opinion of the Committee, and Mr. Parker signed that report as a true state of the case.

"You must also remember Mr. Parker further owns what is alledged against him concerning his saying he would not be at the tryal with a safe conscience, and tells us it was because he could not speak twenty words; of what validity this part of his defence is, I leave you to consider.

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"As to the affair of Capt. Stanton, it is not materiall whether the soldier was in the right or the wrong; Mr. Parker says he clear'd him after examination, which implys his not being guilty. But I say he ought to have made me acquainted first and not suffered the merchants or veriadores to have been judges in a case wch I reserved to myself.

"And now you have the whole state of this case before you and seen severall of the heads of the charge proved by affidavits, and that the other parts thereof are true, is well known to you, and fresh in your memories. You must be sencible of the dangerous tendency of such practices, and the necessity of a proper remedy, and therefore that we may come to a resolution I now put the following question to you: Whether the aforesaid charge against Mr. Parker is sufficiently proved?"

The question was debated upon by the members of the Board, but the President's able and unequivocal summing up did not leave much room for debate. As was the custom in those days, this question was again put to Mr. Phillips, the youngest member first, and the other members according to their standing.* They were all of opinion that the charge against their brother councillor was sufficiently proved—all, except Mr. John Braddyll, who remained loyal to his friend to the last. Mr. Braddyll boldly asserted that, in his opinion, the charge was not proved, and desired leave to give his reasons in writing for his dissent from the unanimous verdict of the Board, which was granted. He thereupon set forth the following reasons for dissenting from the views of the Council:

"Mr. Parker's erasing his name from the Consultations and adding an exceptionable postcript to the report of the Committee relating to the Rice Affair, was what ought not to be done, and what he would not have done himself, but as he beleives Mr. Parker did not do it with a design to injure the Company, or anybody else, he thinks that in a great measure alleviates his crime, and added that he knew Mr. Parker to be as honest a man as any upon the Island."

* The custom of allowing the junior member of Council to record his opinion before all the others seems to be of very old standing. In his interesting book on *The English Factories in India, 1618-1621*, Mr. Foster first notices it in a Consultation dated March 9, 1621, and adds the following footnote to explain its origin: "It will be noticed that the members record their opinions in order of juniority, the idea being that the younger merchants would speak their minds more freely than they would if their seniors had already expressed their views. This practice is still observed in the Governor-General's Council, which is, of course, only a development of the Factory Council of former days."

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Braddyll's reasons seem to be far from convincing, and the Board, too, did not think them worth serious consideration. He was probably conscious of the fact that he was defending his friend in a cause which must have seemed to them both wellnigh hopeless, and it will be observed that, in his last effort on Parker's behalf, Braddyll appeals to the Board for mercy rather than justice. But the appeal was made too late. Parker was given several opportunities for atonement and amendment, but he had failed to seize any. Braddyll might have served his friend better had he advised him to apologise. Perhaps he did, but the Second on the Island was too proud to bend his knee. All the same, much credit is due to the man who stood loyal to his friend to the last, in the teeth of bitter opposition; and the test of Braddyll's loyalty lies in the fact that he was interested in the suspension of Parker from his dual office of Accountant and Chief Justice of Bombay, as he knew, or must have known, that he himself would be appointed to succeed him.

The trial of the Worshipful Lawrence Parker was now drawing to a close. All that remained to do was to mete out punishment to the defaulter. The question was therefore put "whether Mr. Laurence Parker shall be now suspended from his place and station, and from acting any further in the R^t Hon'ble Company's service, and from receiving any further either Sallary, Diet Mony, or any other allowance, untill our R^t Hon'ble Masters pleasure shall be known." All the members of the Board (except, of course, Mr. Braddyll, who thought Parker ought not to be deprived either of his salary or diet money) being unanimously of opinion that he should be so suspended, the following Resolution was duly recorded:

"Resolv'd that Mr. Parker be suspended, and he is hereby suspended accordingly, from his place and station, and from acting any further in the R^t Hon'ble Company's Service, and from receiving henceforth either Sallary, Dyet mony, or any other allowance, untill our Hon'ble Masters pleasure be known.

"Order'd that the Sec^y give him notice thereof, and that Mr. John Braddyll take charge of the Generall Books from him, and act as Cheif Justice of the Court from this day."

Parker seems to have accepted his fate with resignation. He made no further representation to the Board; at any rate, there-

appears to be no entry to that effect in the diary for 1720. There are also no means of ascertaining whether the Right Honourable Masters approved of the Board's verdict and sentence. In those days, when a voyage between England and India occupied several months, and other means of communication were very limited, the policy of trusting "the men on the spot" was, of necessity, more generally maintained than at the present day, and the authorities at home must have seldom interfered with the decision of the factors in India, particularly in purely administrative matters. Parker may have appealed to the Directors on his return to England; but as regards such appeal, if any, the Bombay records are silent. So far as Parker was concerned, the trial ended with the order of his suspension; but we find Mr. Braddyll figuring in it again a few days after. It seems that the reasons he had assigned for dissenting from the unanimous verdict of the Board as regards Parker's guilt were accepted with some hesitation, and even his motive was misconstrued. Thereupon Braddyll wrote the following letter on May 30, 1720:

"It appearing in the Consultation of the 6th Inst., relating to Mr. Parker's suspension, that my opinion differ'd from the majority of the Board, both in respect of the proofs brought against Mr. Parker as also concerning his suspension, I thought it necessary to lay before your Hon^r &ca the following reasons which moved me to this (course), lest it should be thought either by my Hon'ble Employers or your Hon^r &ca that I was governed in this affair by a spirit of obstinacy or opposition.

"W^th your Honrs &ca's leave, I shall first have regard to the following question proposed to me by the Presid^t, which is whether the charge against Mr. Parker was sufficiently proved, to which I answer'd I (thought) it was not. What moved me to think thus was the evidence of Messrs. Cobbe, Bendall, and Edlyne concerning Mr. Parker's indisposition, which are sufficient to convince me that Mr. Parker was so much indisposed (at the time he was charged with absenting himself from Consultations without good and sufficient reason) that he could not possibly have attended without prejudice to his health. I shall with due submission crave leave to mention another part of Mr. Parker's charge which I thought not sufficiently clear'd, and that is his not giving due attendance at the Accomptant's Office. Messrs. Newlin and Sarson were asked whether they thought the business of that office was kept behindhand through Mr. Parker's neglect, to which they answer'd No: and I am in some measure induced to regard the opinion of these gentlemen, they having good experience in the Accomptant's business, and I am the rather inclined to think it was (not) Mr. Parker's fault that the books

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were a small matter behind last year, because his cheif assistant, Mr. Newlin, was much indisposed at the time the bulk of the business was to be transacted, which is too heavy for one person, and I beleive your Hon^{r} &ca are sencible that the books last year were more voluminous than usuall.

"It may now necessarily follow that I proceed to the next question proposed me by the President, and that was whether Mr. Parker was to be then suspended from his place and station, and from acting any further in the R^{t} Hon'ble Company's service, and from receiving thenceforth either sallary, dyet-mony or any other allowance, untill our Hon'ble Masters pleasure be known: to which I made reply I thought he ought not to be deprived of either. I was urged to give my opinion in this manner having recourse to part of a parag^{h} of the Hon'ble Company's Generall Letter p. Stanhope which I understood to be a standing order. The words are as follows: 'Wee say we empower you, the President and Councill for the time being or the major part of them all being summoned (and no just cause for their absence), to suspend any one of the Councill if they have good reason for so doing, such as infidelity or disobedience to the Govr & Councill's authority.' And as it did not appear to my reason that Mr. Parker had either been charged or found guilty of any such crime, I was moved to give my opinion in the negative. Hoping thereby I have given no offence, as none was intended, and remain with all due respect," &c., &c.

The President and the other members of Council did not allow Mr. Braddyll to have the last say in the matter. For they wrote out a long reply and had it duly recorded in the Minute Book as follows:

"Mr. Braddyll having del^{d} in writing his reasons dated this day, for dissenting from the resolutions of the Board on the charge against Mr. Parker, the 6th Inst., as above enter'd, the President and other members having taken the same into consideration, judged it necessary and resolved that the following remarks be also enter'd:

"It is in the first place to be observed that Mr. Braddyll does not so much as touch upon the proofs offer'd for support of the charge or make the least objection against any one of them, but on the contrary makes the evidence of Messrs. Cobbe, Bendall and Edlyne on Mr. Parker's indisposition the reasons for his opinion, and thereto adds that that part of the charge for not duly attending the business of the Accomptant's Office is not made good, because Mr. Newlin and Mr. Sarson being asked whether they thought the business of that Office was kept behindhand through Mr. Parker's neglect, answer'd, No; he goes on and says, 'I am inclined to think it was not Mr. Parker's fault because his Cheif Assistant, Mr. Newlin, was much indisposed at the time the bulk of the business was to be transacted.' These are his reasons for dissenting, on which the following remarks do naturally occurr, vizt.:

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"That he has omitted to take any manner of notice of the charge relating to Mr. Parker's opposing the Govr in military affairs. To the erasing his name from the Consultation and to the adding the postscript to the Committee's report on the Rice Affair, which are things of a very high nature, and what Mr. Braddyll himself thought so, especially erasing the name and adding the postscript above mentioned, as appears by the Consultation of the 6th May, where he declared he would not have done so himself.

"In answer to the reasons which he says induced him to beleive Mr. Parker could not attend the Tryall of Rama Comattee and at some other Consultations, from the evidences of his indisposition before mentioned, it is to be noted these will appear insufficient, when it is remember'd that notwithstanding Mr. Cobbe was so positive, yet Mr. Parker owned he could have gone abroad, and did actually go abroad in the evenings of some of those days, his distemper cheifly affecting him in the use of his speech, which also was by short spaces, and never lasted long at one time.

"It is very plain y^t the reason why the books were so much behindhand was partly owing to Mr. Newlin's indisposition, but this is very far from being a good excuse for Mr. Parker: on the contrary it aggravates his fault in not attending and doing himself (during that time at least) that part of the business, neither does it appear that he made any one entry in the books.

"Mr. Braddyll proceeds next on the question for (of ?) suspension of Mr. Parker, and for his dissenting in this also he assigns the R^t Hon'ble Company's orders, which he says seem to him to imply that the reasons for which one of the Councill is to be suspended are such as infidelity or disobedience to the Govr & Councill's authority, in which he thinks Mr. Parker is not guilty. To this it must be answer'd that the facts charged on Mr. Parker are sufficiently (proved) and are evidently disobedience and opposition to the Govr's authority and a willfull neglect and omission of his duty at this Board and on other occasions; besides, it will by no means follow that because the R^t Hon'ble Company have not stated all the cases in which a servant may deserve suspension, that therefore there are none besides those they have enumerated, and we may humbly presume they will resent such practices and think our present proceedings highly agreeable to their interest.

"'Tis also to be observed that Mr. Parker pretends (the) occasion of erasing his name was because the Presid^t did excuse the Company's servants, and did not make it a Minute of Councill, and appeals to Mr. Braddyll as a wittness; whereas this was so far from being any part of our debate that it never was mentioned once at the Board till the Councill was adjourned, and the Presid^t and Mr. Parker had conferr'd together in another chamber, and the Presid^t returning made the declaration already taken notice of, which Mr. Parker in his minute of the 5 May confesses. Nor did our Hon'ble Masters direct more than that we should settle the quantum, not the persons that should pay, that being regulated by them, agreeable to the custom in Persia, as P. their letter P. Cardonnell, Parag^h

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( ), will appear; besides, had it been an act of Councill and omitted to be minuted, as Mr. Parker alledges, that in our humble opinion is not a sufficient reason for his erasing his name."

It will be seen from the above that Mr. Braddyll was given an effective reply to his letter of protest. But though vanquished, he fought well for Parker, and all honour to him!

(III)

The next trial affords a fair illustration of the methods of judicial administration then in vogue in Bombay.*

"Mr. Braddyll," says the record, dated April 25, 1724, "having been much insulted by a trooper last Monday night, when he was walking out with his lady, having been almost rid over, and Mr. Braddyll calling to him and bidding him take care and keep off, he returned in answer, 'God d——'n you; if I had a pistol I would shoot you through the head for a farthing.' Mr. Braddyll answering, 'Would you so?' He again returned, 'Yes, I would—you are a rogue and a rascal.'"

Looking to the position Mr. Braddyll occupied at the time, the fate of the insolent trooper was sealed. There was, however, a difficulty in identifying the accused, but after some inquiry having been made as to who was on duty at that time of night, one Matthew Bogle* was fixed upon and brought up for trial before the Court, the Worshipful John Hope, Chief Justice, presiding. Bogle, however, stoutly denied being the person who insulted and abused Mr. Braddyll.

"But," continues the record, "the corporal of the first guard declaring that it was him and no other, and the officer of the guard confirming of the same, and two witnesses to the insult, besides Mr. Braddyll, viz., Captain Montague and Ensign Mainwaring, both at the time in the same place with Mr. Braddyll, the Court considering the circumstances, the voice agreeing (no other trooper at that time being at the fort), the corporal's confirmation, the words plainly proved, and nothing to the contrary but a plain denial, the Court condemned him to receive thirty-nine lashes in the public bazaar, and to be sent on board one of the Company's vessels, there to serve during the Governor's pleasure, without pay."

The evidence against the accused was considered to be unimpeachable, but there was another incident in this trial which

* An unfortunate name before executive tribunals! *Vide* the proceedings against Governor Eyre of Jamaica in the sixties.

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must have made it impossible for the unfortunate trooper to prove his innocence. This was the peculiar formation of the tribunal which condemned poor Matthew Bogle, for we are told that Mr. Braddyll was not only the prosecutor, but he was one of the judges who tried the case! It is hard to believe this statement, but in those days a tribunal was considered not the less judicial because of the presence and participation of the complainant in its proceedings. Not only did Mr. Braddyll form one of the Court which tried the prisoner, but he actually signed the order awarding him thirty-nine lashes.

(IV)

But the interest of the trials described above sinks into insignificance beside the one we are about to describe. During the whole of the eighteenth century there was probably no event in the judicial history of Bombay which gave rise to such keen local interest as the trial of Rama Kamati. Nearly a century after, an Englishman named Charles Joseph Briscoe, a man high in the employ of Government and one who had the distinction of being an Alderman, was tried on a charge of bribery; and another, by name Robert Henshaw, who had the confidence of Government and the public alike, and was at the time occupying the responsible and lucrative office of Customs Master, was arraigned before the famous Recorder of Bombay, Sir James Mackintosh, on the charge of issuing "permits" for a consideration and effecting the clandestine export of grain. Both these trials must have given rise to considerable excitement in Bombay at the commencement of the last century, but even they failed to eclipse, alike in interest and in importance, the earlier trial of Rama Kamati.* Ramaji Kamati was a man of vast wealth

* As the name "Kamatee" appears in the early Bombay Records for upwards of twenty years, with but slight variations, a writer in the *Bombay Quarterly Review* is led to assume that the accused in this trial belonged to the inferior caste of Kamatees. But the weight of evidence would seem to be against such an assumption. Grant Duff is of opinion that the name must have been *Komptee*. Da Cunha observes that Rama Kamatee was a Shenvi Brahman of the same family of which there is now a prominent and influential branch living in Goa, called Camota and Camotim. Douglas also agrees with this opinion, remarking that Kamati's ancestors came originally from Goa in the time of the Portuguese, and held high position in Bombay under the English Government after the island was ceded to the latter. Moreover, the Records themselves speak of this man as a Brahmin. The

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and influence, and by his munificent charities and valuable services had won the esteem alike of the public and of the Government of Bombay during the early part of the eighteenth century. He must have been a deeply religious man, for he built several temples in our city, the principal one being at Walkeshwar, which is still a favourite place of Hindu worship. It may be noted in passing that the man who was afterwards condemned to life-long imprisonment on the strength of false evidence, mostly extorted by unchristian means, had not a little respect and reverence for Christianity. For we are informed that he and his caste-people witnessed the divine service which was held on Christmas Day in 1718, when the Bombay Cathedral was consecrated. "A whole crowd of black people," says Mr. Edwardes, "stood round about, among them Ramaji and all his caste, who were so well pleased with the decency and regularity of the way of worship, that they stood it out the whole service."* Ramaji had evidently amassed much wealth by securing what were known as tobacco farms. The earliest mention of him that we have been able to find is in a letter the Bombay Council despatched to Surat on February 5, 1686. They wrote:

"Your Exc^y &ca are noe strangers to y^e *Rendeiroes* of ye last years Tobacco stand. One Ramagee Commattee, in whose behalfe we now write, has by his experience the last yeare some incouragmt to advance mony for tobacco in order to take ye same againe this year, and will bid as much as any, and doubts not but to carry ye day. He has hitherto been very punctuall in his paymt^s and believe him to be a monyed man such as those must be the men that farme rents, that has a stock allways beforehand, in order to which has sent sever^ll to Surratt to purchase a large quantity of Tobacco, and makes it his request to your Exc^y &ca. that what Tobacco he shall buy between this and ye raines may be sent down in the Right Honourable Comp^as shipp or vessells for ye more and better security, for which he wholly putts himselfe upon your Exc^y &ca, and doubts not your assistance therein." †

The above passage shows the high estimation in which Rama Kamati was held by the English Government, and the

weight of evidence supports Da Cunha's opinion that Rama Kamati was a Shenvi. His proper name was probably Kamat, a common name among Shenvis even at the present day.

* *The Rise of Bombay*, p. 139.

† Forrest's *Selections*, i. p. 155.

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source and extent of his income. He had succeeded in gaining the confidence of the authorities so completely that the latter had placed him at the head of some native troops in Bombay, probably because their *protégé* had descended from men who had served in several wars in the Madras Presidency. But the pedestal on which the idol was raised so high was soon broken, and the idol itself was shattered to pieces. Government were still very diffident about the loyalty of the men in their employ. The memory of Keigwin's revolt still lingered, and the mutinous spirit which had actuated it had not yet died out. Some of their own countrymen had proved false, and sold their services to the enemies of Government. The man who gave the English most trouble during the first quarter of the eighteenth century was Kanhoji Angria, the famous pirate.* He occupied the same position among native pirates as did Kidd among European interlopers. He commanded very great influence at the time, and was in league with those whose loyalty to the authorities was open to doubt. The Bombay Government had got an inkling of this, and were keeping a close watch over the movements of some of their most trusted servants, one of them being Rama Kamati. Secret inquiries were instituted, till in the beginning of 1720 the matter came up for investigation. A Consultation of the Bombay Council, dated February 26, 1720, records the following entry:

"The President lays before the Board translate of several papers and letters containing certain informations of Rama Comattee having unlawfully and treacherously held and carried on a correspondence and trade

* Among the many qualifications of this prince of pirates not the least was his proficiency in writing letters which combined sarcasm with dignity. For instance, two years after William Phipps succeeded Charles Boone as Governor of Bombay, Angria sent him a letter of congratulation. Phipps, after twitting him for the long delay, read a little homily regarding the drawbacks of war and the advantages of peace and trade. The Pirate King was not at a loss for a retort. "Your Excellency," he replied, "was pleased to write that war proves most fatal to those whom the use of the sword is not understood, but in the Government of His Excellency Charles Boone, nobody can say there was not loss on both sides, for victories depend on the hand of God, and for this reason great men take little notice of such losses. Your Excellency is pleased to write that he who follows war purely through an inclination that one hath thereto, one time or another will find cause to repent, of which I suppose Your Excellency hath found proof, for we are not always victorious nor always unfortunate" (Forrest's *Selections*, i. p. xxxviii).

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with Conojee Angria both before and since the present war to the great dishonour and prejudice of the Right Honourable Company: all which are now read, and for a methodical proceeding against him, *Ordered* that Messrs. Walter Brown, John Courtney, Owen Phillipps and John Horne collect and draw up from the said informations a regular charge and lay the same before the Board with all convenient speed; and that till we can bring him to a trial, his moveable effects be secured under the Company's seal; that the receiver of the revenues take charge of the tobacco farm and that the Vereadores of Bombay and Mahim take care of his oarts and those of the Right Honourable Company rented to him. The aforesaid papers likewise giving us some reasons to suspect that Dulba Bandaree has been an accomplice with Rama Comattee in carrying on the said correspondence, *Resolved* that a guard be immediately set on his person and goods till we can examine farther into this affair." *

The Government, it will be observed, had proceeded cautiously in the matter. Considering the position of the accused, who was then one of the leading Hindus of Bombay, and the gravity of the charge alleged against him, they had every reason to hasten slowly. But they were evidently satisfied with the genuineness of the proofs they had obtained, and were morally convinced of the guilt of the accused. Conformably to the above order, Messrs. Brown, Courtney, Phillips, and Horne drew up an indictment against Rama Kamati, consisting of seven articles. It was drawn up in English, and a copy, signed by the Secretary, was ordered to be given to the accused, together with its translation in Portuguese, requiring him to be prepared with his reply by March 17th next. It is interesting to note that the indictment was translated into Portuguese, and not into the language of the person charged, and that, as Perry, C.J., pointed out in support of his contention that English law was introduced in Bombay soon after its cession by the King of Portugal, it was drawn up in the form prescribed by the English law. The preamble to the indictment ran as follows:

"Articles of treason and other high crimes exhibited by the Honourable C. Boone, Esquire, President and Governor of Bombay and Council, on behalf of the Right Honourable United Company of Merchants of England trading to the East Indies, against Rama Kamati, Brahman, inhabitant of Bombay, for several offences done and committed by him, the said Rama Kamati, by advising, abetting, and assisting the enemy Kanhoji Angria, whereby he hath endangered the safety and welfare of

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 144.

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the said Right Honourable Company by endeavouring to introduce the enemy into the said island in order to subvert and extirpate the English and their Government thereof and to seize and bring into great peril the person of the said Honourable the Governor."

The indictment set forth the following seven charges:

"(1) That in or about the month of December in 1717, when the said Governor and President was in treaty with Kanhoji Angria for the delivery of the ship *Success** belonging to Govardhandas, late broker to the Right Honourable Company, which had been some short time before taken up by the said Angria, he the said Kamati wrote a letter to Angria advising him that the said ship did not belong to the English or any of their dependants, but to some merchants in Surat, and that therefore he need not deliver her up without a considerable ransom.

"(2) That in October, 1718, after the breaking out of the war, he the said Rama Kamati wrote a letter to the said Angria telling him of the preparation and readiness of the English fleet to proceed against him, and particularly that it had been resolved in Council at Bombay to make a descent on the island of Cundry (Kenery) on the 17th of the said month, and withal advising him, the said enemy, to be on his guard and lay in provisions and a sufficient number of men and war-like stores for the defence of the said island of Cundry.

"(3) That in or about the same month of October, 1718, he did intercept or cause to be intercepted a letter written by the directions of the Portuguese General of the North to the Honourable Governor and President of Bombay, intimating an inclination in the Portuguese to enter upon a treaty for joining their forces to the English for the more vigorous carrying on of the war against Angria; which letter he not only kept from the knowledge of the said Governor and President but privately sent to the enemy with another from himself containing further advices on that occasion.

"(4) That the said Rama Kamati did counsel and advise the said enemy to attempt and invade the island of Bombay with armed force and to seize the person of the Honourable the Governor thereof, laying down the plan of the time and manner for putting in execution the said wicked purpose.

"(5) That he did carry on an unlawful trade and commerce with the said enemy at several times, notwithstanding the known orders and proclamations to the contrary, and particularly in batty which he purchased in Angria's country during the war, as also some wool and potashes which he sent with his grandson-in-law, Garru Sinay (Gharu

* The *Success* not only brought about, in a measure, the ruin of Rama Kamati, but involved the English in a war with Angria and his family, which lasted for nearly forty years.

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Shenvi), to the enemy's country and received turmeric in return thereof.

"(6) That about the month of November, 1718, the Honourable President and Governor thought fit to put into his hands the immediate care and command of all the fighting sepoys which were then to be employed against the enemy; when the better to carry on and effect his malicious designs and purposes, he secretly endeavoured to intimidate and discourage them from the performance of their duty to the Right Honourable Comp[a]; and particularly when Antonio Francisco D'Costa, subhedar of a company of sepoys, spoke of an offer made to him by the chief officer of Mopont under Angria [perhaps Mohopada, above Panvel], for the delivery of that fort, he received the notice thereof with coldness and neglect; and was further told by Druga (Durga), son of said Rama Kamati, not to be too busy in such matters, lest he meet with the fate of Antonio D'Mello and be sent to St. Helena.

"(7) That on a rumour of a discovery of these practices, the said Rama Kamati being apprehensive of the consequences, did in the month of December, 1719, remove and convey off the island to Thana or elsewhere, part of his movable estate and particularly 14 chests of treasure. All which matters and facts charged in the several articles before-mentioned are proved and made out by living witnesses now on the spot, and the certificates of other persons, together with the letters of the said Rama Kamati, directed to the said Kanhoji Angria, contrary to his duty and obligations. Whereby he appears to be the principal author of the war and the occasion of its so long continuance by thus secretly and wickedly combining with the enemy against the dignity and interest of the Right Honourable Company and the liberty and life of their Honourable Governor and all the English inhabitants of the said island."*

From the particulars of these charges it will be seen that Rama Kamati had to meet a very strong indictment. Excepting the fifth charge, in which Angria's friend was accused of having exchanged with him some wool and potashes for turmeric, all the others were very serious, and the Government of Charles Boone were evidently possessed of unimpeachable evidence, both oral and documentary, to prove the guilt of the supposed traitor. Of the oral evidence in this trial we shall have occasion to speak later; of the documentary, we shall quote only two of the letters said to have been written by Rama Kamati, and sealed with his own seal, to Kanhoji Angria. The first of these, referred to in the second charge, is a curious specimen of the style adopted by the leading Hindu

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. pp. 145–146.

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merchant of Bombay in addressing the Pirate Prince of India. It runs as follows:

"To the opulent and magnificent as the sun, valorous and victorious, always courageous, the liberal, prudent and pillar of fortitude, the essence of understanding, the protector of Braminees, defender of the faith, prosperous in all things, honored of kings, above all councillors, Senor Cannoji Angria, Sarqueel. Ramajee Comatee, your servant, writes with all the veneration and readiness for your service and with your favor I remain as always.

Our General here has resolved in Council to attack and take the Fort of Cundry (Kenery), and thus it is agreed to environ the said Fort the 17th of October, and the Armado, powder and ball, and all other necessaries for war are ready. I therefore write Your Honor that you may have the said Fort well furnished. As for the side of the Rajaporee, I have spoken to and agreed with Allee Naiq Loucandee that they of Rajaporee shall not help either party; thus I have given this notice. I do not write more, only beg that you'll retain me in your favor.

"Dated the 12th of October, 1718." *

Alas for the short-lived glory of long titles! The ever-ready and reverent servant was soon confined to life-long imprisonment, in spite of the fact that his patron was valorous and victorious, and prosperous in all things—except in saving his friend from the dungeon. Kanhoji was himself laid low by the English, though not without some resistance. The second letter also was supposed to have been written by Kamati to Angria soon after the former had intercepted the important message from the Portuguese General of the North to the Governor of Bombay—an act of disloyalty and treachery which forms the basis of the third charge. Campbell cites it as follows:

"This is to let your honour know that the Portuguese of Bassein have wrote to our chief, which letter is concerning you, and therefore Dalba Bhandari has sent it to you, by which you will understand everything. Dalba Bhandari and myself are with one mind, the least of all your servants, and we assure you on our part we shall never be wanting in your service. We further advise you that our Chief is always both day and night at Parel and he has no power in his company only his own chamber servants; and for this reason we write you that by night

* *The Bombay Quarterly Review*, iii. 1856, p. 49.

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you may send six or seven galivats* who, landing, will gain a victory without doubt. Upon the whole your honour is a prudent man. When you have read this letter, we desire you would keep it and not put it in the office, neither the others at present. I do not write more, always hoping for your protection.

"Dated the 22nd of *Suffar*." †

If this letter had, in fact, been written by Rama Kamati, one could have felt no sympathy for a traitor so daring and despicable. But the circumstances of its having been proved a forgery long after the innocent man had pined away in prison fills one with contempt for those who sat in judgment on him and condemned the unfortunate Shenvi Brahmin. It may be noted here that Dalba Bhandari had to share his master's fate for the part he was supposed to have played in writing and despatching this letter to Kanhoji Angria.

Rama Kamati was not a man to be frightened either by the length of the indictment or the seriousness of the charges he was called upon to meet. Being of a cool and calculating nature he must have sat himself down to weigh carefully the allegations made against him, and prepare a defence which would convince the Government of his loyalty and the public of his innocence. But he must have felt the difficulty of his task. To begin with, Government were his prosecutors as well as his judges. The tribunal was composed of the President and Council. The accused could not ask for a transfer of his case, for there was no other Court which could take cognisance of such a case. Moreover, Rama Kamati had got an inkling of the fact that his prosecutors had extorted certain valuable information from some of the principal witnesses, and that they had got up the case against him by means which were not above reproach. But where was the good of pointing this out to the judges who had themselves stooped to such expedients? He had to meet the charges somehow; so, like a reasonable man, he took up pen and paper, and wrote out a long statement in his own defence. Instead of condensing this in our own words, we shall reproduce the whole of it below. Campbell makes room for this remarkable

* Galivats or gallevats were a kind of galleys or war-boats with oars, of small draught of water, which continued to be employed on the west coast of India down to the latter half of last century.

† *Bombay Gazetteer Materials*, xxvi. part i. p. 145.

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document in the first part of his *Materials*, which runs as follows :

"In the preamble is nothing material more than that the defendant asserts the witnesses are all brought over to swear against him by bribes, fair promises, threats and punishment, for which reason their evidence ought not to be taken, and insinuates his former good services deserve better treatment. In answer to the first article he says the charge is of no significancy, as his giving notice to Angria could be of no advantage, because as soon as he has taken any ship or vessel, he immediately makes a strict inquiry who she belongs to of the officers and others aboard, and is perfectly well acquainted with every individual ship belonging to Surat, for which reason, he adds, it would be folly in him to send such advices. In his defence to the second article he alleges that when our fleet came before Cundry the fort was so ill provided with men and ammunition that the enemy ran the risk of throwing succours of both into it after it was besieged by us. From this he infers that the enemy would of course have taken better care in furnishing the garrison (which was so weak that even the women were obliged to assist in the defence of it) had he given the notice he was charged with. He further adds for his justification that it was he who first told the Governor of the weakness of that place, and after the Governor was gone thither he desired Mr. Parker to confirm the same by writing to his Honour, which he thinks is sufficient proof he is not the author of these letters. Touching the third article, he alleges there is no proof of the letter mentioned in his accusation was delivered to him, and seems to insinuate there was no such letter sent. To clear himself of the charge in the fourth article he pleads his former good services and the many obligations he lies under to the Right Honourable Company and the English nation in general, and to the Governor in particular, which would make it the highest ingratitude imaginable in him to be guilty (even in thought) of such a piece of cruelty, and thinks it would be a great folly to attempt such a thing, considering how well the island is guarded by several stout frigates and forts and a number of good English officers. As to the fifth article, he denies to have had any dealings with Angria during the war, and says the Governor gave Garru (Gharu) Sinay leave to come hither to celebrate the marriage of his grand-daughter, and that what goods he carried with them were bought publicly during the cessation of arms and were only designed to defray his charges, which he looks on as no crime. To invalidate the charge in the sixth article he alleges that if Antonio Francisco D'Costa had any such offer made him, it is probable to believe he would have revealed it to the Governor or Captain Stanton, who was his commanding officer, and not to the defendant. He therefore thinks that a sufficient reason to conclude it was not communicated to him, and further adds that all the sepoys were not under his command, some of them (the Pattanees) being under the direction of Umerji. He defends himself from the charge of the last article by insinuating that the

three letters mentioned in the other articles are all false, because they were not his own handwriting. He concludes with saying that it is easy for those who can forge letters to make a false seal also. He repeats that his accusers have made use of bribes, threats, and fair promises to procure evidence against him. He humbly hopes that what he has represented and his former good services will induce the Board to clear him from the charges laid against him, urging it is highly improbable he would trust a secret of such importance to anybody else when he was able to write himself." *

But instead of inducing the Board to clear him of the charges, Rama Kamati's statement of defence seemed to have convinced them of his guilt. His past services were not taken into the slightest account, and the counter-charge of threats, bribes, and fair promises was repudiated with some vehemence. It is also doubtful if they gave sufficient weight to the answer Kamati made to each of the charges. Having regard to the very peculiar position Government occupied in this trial—of being both prosecutors and judges—a strictly impartial inquiry was hardly to be expected. They reiterated all the charges, and resented the accusation of bribery, corruption, and extortion.

"His assertion in the preamble," Government wrote in reply, "that the witnesses were all brought over to swear against him by bribes and threats is a reflection on the justice of this Board and ought to be looked upon as a reproach and no testimony, since he has not brought one single proof of it. (1) His answer to the first article is only a bare denial and evasion of the charge without bringing any evidence to clear himself of it. (2) The enemy's neglecting to follow his advice is no manner of proof that he did not send it, nor against the evidence of the person that wrote it. (3) The oath of Govindji (who wrote this letter) is proof enough of the 3rd article. (4) His former good services (for which he has been well rewarded) are not a sufficient reason to believe that he is not guilty of what he is now charged with, when we have a letter under his own seal and owned by the person who wrote it under his direction. (5) His alleging the goods were carried off the island during the cessation of arms is a mistake, because there was no cessation of arms at all. (6) That Antonio Francisco D'Costa did not tell the Governor nor Captain Stanton can never be esteemed a sufficient proof that he did not tell Ramaji, especially since Captain Stanton swears he, the prisoner, owned to him that Antonio Francisco D'Costa had told him so and Captain Stanton had at that time gone down the coast. (7) His answer to the last or 7th article is foreign to the purpose, and we have a cloud of witnesses to make good the charge contained in it." †

* *Bombay Gazetteer Materials*, xxvi. part i. pp. 146–147.

† *Ibid.* pp. 147–148.

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It was but natural that the Board should look upon Kamati's accusation of bribery as a reflection on their sense of justice. But the facts that were elicited long after the trial had ended, and the unfortunate man had died in prison in 1728, fully justified his fears, for there was gross miscarriage of justice in this case, as we shall presently see, and it is highly improbable that when they replied to Kamati's written statement of defence, the Board were not aware of the manner in which important evidence was extorted from the principal witness, Govindji; their protesting against the accusation was therefore adding insult to injury.

The preliminaries having been duly arranged, the matter became ripe for judicial hearing, which must have lasted several days. The proceedings of the trial are too prolix to be of general interest. But there is at least one important feature which has been brought to light by a writer—presumably Anderson—in one of the early volumes of the *Bombay Quarterly Review*. This was the torture sanctioned by Charles Boone, who presided over the tribunal which condemned Rama Kamati to life-long imprisonment. It is said to be the last instance of any English Government making use of a barbarous practice which had long been abolished in Great Britain,* although continued in France up to the period of the Revolution. Governor Boone had evidently taken this illegal step on his own responsibility, without even consulting his colleagues, for it was first brought to the notice of the tribunal at the examination of the prisoner on Sunday, March 27, 1720.† The prisoner, we are told, hearing his clerk, named Govindji, summoned as a witness, raised a preliminary objection against any evidence that he might offer, because, he explained, the witness was acting under compulsion. That this announcement created a sensation we can readily believe. An explanation was, of course, demanded, whereupon Governor Boone, seeing that further secrecy was of no avail, volunteered the following information. Fourteen

* The last case of judicial torture in England, according to Douglas, was in 1640, though declared illegal in 1628. It was used in Scotland during the reign of Charles II. and abolished in 1709.

† It is interesting to note that the Court transacted business even on Sundays.

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days ago, he said, Govindjee, the witness, being confined in the "Trunk,"* and seeing Sergeant Collison engaged in writing, had borrowed from him pen, ink, and paper, with which he had himself indited a note. The wary sergeant suffered him to complete it, and then, having snatched it out of his hand, carried it to Major Vane, his commanding officer, who transmitted it to the Governor. No address was written on it, but it was supposed to have been intended for Rama Kamati, as it informed some one that the writer had been examined about some letters and money, but had made no disclosures and was resolved not to make any. It also suggested that the unknown should not be sparing with his money, but use it liberally and judiciously. No further notice was taken of this matter at the time, nor until some days after, when Govindji had contrived to write another letter which, also being intercepted, was found to state that the former letter had fallen into the hands of Major Vane, and that the writer was most anxious to regain his liberty. Further information was given that a clerk attached to a company of sepoys had rolled a letter up in a parcel with some condiments and delivered it to a kitchen-boy, who threw it into the prison. Governor Boone thought this too good an opportunity to miss, so he resolved to procure the evidence of Govindji and his clerk on these material points. On his own responsibility, therefore, he examined the clerk respecting the contents of the letter, but could not induce him to make any disclosures.

"So," says the writer in the *Bombay Quarterly Review*, "availing himself of his antiquarian knowledge, and remembering, we presume, that the degenerate Romans allowed an unrestricted use of the *quæstio* in cases of treason,† his Honour resolved to try whether the secret could

* A corruption of the Portuguese "tronco," a word used originally in Lisbon for a prison or jail.

† Da Cunha does not agree with the writer's opinion that it was Boone's antiquarian knowledge which prompted him to sanction the torture in this case. "The *rôle* of the Inquisitor," he observes, "which he played so well on this occasion has been attributed by some to his antiquarian knowledge, as if he were a Venetian Doge. But imitative proclivities aside, archæology has never yet been known to inspire one to be guilty of such atrocious practices. His studies of the Spanish Inquisition might, perhaps, have led him to act the part of a Don Juan de Torquemada in Bombay" (*The Origin of Bombay*, p. 350).

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be wrenched out, and, to use his own words, the man did not confess, till irons were screwed upon his thumbs, the smart whereof brought him to confession, that there was a letter in the rag with the Kismishes (condiments) which Govindjee's son had delivered to him to be conveyed to his father.' Govindjee himself was then examined, and although he denied all knowledge of the letter, his equivocation betrayed him, so that it became necessary to squeeze the truth out of him also. His Honour, as chief inquisitor, had the terrible irons applied, and Govindjee confessed all that was required."*

Governor Boone has been rightly condemned for sanctioning the use of a practice which was both inhuman and illegal. This is the only blot on his otherwise exemplary career in Bombay, but it is one which will stick to his name as long as the memory of his administration of this Imperial city lasts.

"We can never forgive Mr. Boone," writes Mr. Edwardes, "for countenancing the torture of the ill-starred Govind. The memory of what he effected towards ameliorating the helpless condition of our island is completely overshadowed by regret for this act of inhumanity, regret which is heightened by the knowledge, now vouchsafed to us, that Rama Kamati was guiltless, that the incriminating letters were the merest forgeries!"†

Boone's conduct—it was indeed a crime—was not allowed to pass unnoticed even then. As has been remarked in a previous chapter, there was at least one member of Council, Lawrence Parker, who protested most vehemently against this illegal procedure. "It was against the laws of our country," he wrote, "to extort a confession from any man; and this having been done with a servant of Rama Comatee on the said trial, he could not set there with a safe conscience."‡ True, these words fell on deaf ears, for they were utterly ignored by his colleagues, but they remind us that nearly two centuries ago there was in Bombay a judge who knew his duty and performed

* *The Bombay Quarterly Review*, iii. 1856, p. 50.

† *The Rise of Bombay*, p. 155.

‡ In this connection Douglas asks: "Did this expression of opinion cost him his seat, for Parker's name disappears from the records?" It may have been one of the causes which contributed to his disappearance from the Board, but the principal charge against him was, as we know, that he had clandestinely erased his own signature from an important minute of proceedings.

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it with courage and conviction. Apart from its illegality, the evidence procured by means of the torture proved, more or less, ineffectual, for instead of strengthening the case for the prosecution, it provided Rama Kamati with a defence of which he made the best use. But there were other witnesses who were *supposed* not to have been tampered with, and the documentary evidence was considered to be conclusive proof against the accused. At the very commencement of the trial, the President having been informed that some persons had promised to make a further discovery of the treasonable practices of Rama Kamati and Dalba Bhandari, provided a pardon was secured to them, it was ordered that the Secretary should draw up a proclamation to that purpose. It was chiefly by such means that the evidence against the accused was concocted. His letters to Angria were produced in Court; they were alleged to have been written by him, and the seal attaching to some of them was sworn to be his. Then a witness was brought forward to depose that having gone to Colaba, and having induced a favourite dancing-girl to intercede with Angria for the restoration of the *Success*, the pirate chief assured her that the ship did not really belong to the English, as he knew by the information received from Rama Kamati, but to a merchant of Surat. A Portuguese secretary was summoned to prove that he had written the letter addressed by the General of the North to the Governor of Bombay, which the accused was charged with intercepting. The oral evidence does not strike us as particularly convincing, though the incriminating letters must have left no room for doubt in the minds of the judges that the prisoner at the bar was guilty. In spite of this, however, they could not find him guilty of the capital offence—*i.e.*, treason. In the diary dated April 11, 1720, there occurs the following brief entry: "Rama Kamati was this day found guilty of high crimes and misdemeanours as by the trial will more fully appear. The Board ordered that his person be confined to prison during life and his estate forfeited to the Company." Though the life of the unfortunate man was spared, he did not survive his fate long, for he died in prison eight years after. In execution of this sentence much of Kamati's valuable property, a part of it being within the walls of what is now called the Fort, must

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have been confiscated by the authorities. Not long after the sentence was passed a proclamation was published requiring all persons having any demands on Rama Kamati to lay their claims before the Court of Judicature within ten days, and one of those who laid their claims, pursuant to this proclamation, was the President himself, who put forward a demand on the estate of the Shenvi Brahmin for Rs.12,791, qrs. 3, and reas 22.* The Secretary was authorised to take possession of the prisoner's estate, movable as well as immovable, and to dispose of his effects by public sale. His immovable property in the Fort alone was sold for Rs.20,000,† while his cocoanut orchards and batty grounds in and around Bombay were valued at Rs.37,989. These the Council resolved to purchase for the Company, and the Accountant was ordered to bring them on the books accordingly. In this connection there is a very interesting entry in the diary dated July 4, 1720, which runs as follows :—

"There being a large Warehouse of 86 feet length in the Bazar belonging to Rama Comattee, with an upper room over it, which last will be very proper to hold the Court of Judicature in, and which the President has caused to be valued by Major Vane and the Master Carpenters and Bricklayers, who report it worth Rupees six thousand. As that is much less than we can build a proper place for the Court to sitt in, besides the benefit of the Warehouse, resolved that we purchase it at that price on the Right Honble Companys account, and that the upper room be fitted up for that use, and that the 2 p'cent fines levied on persons cast in the Court shall be applied in part payment thereof, and ye Warehouse may be appropriated as a granary for Batty or other goods which we sometimes stand in need of." ‡

If the estate of Rama Kamati had been confiscated after absolute proof of his guilt, the use of a part of it for holding the Court of Judicature might have been regarded as singularly appropriate. But considering that the whole proceedings, from beginning to end, were vitiated by most questionable means

* Accounts were kept at Bombay in rupees, quarters, and reas up to at least November, 1834. Reas, or rees, were small money of account formerly in use at Bombay, being in value the twenty-fifth part of an anna (*Hobson-Jobson*).

† Warden says that this property was sold to one Hurjeevan Surput for Rs.22,600 on August 25, 1786.

‡ Forrest's *Selections*, ii. p. 20.

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employed in procuring evidence, and having regard to the facts that transpired long after the prisoner had passed away, the purpose to which his warehouse was put seems a mockery.

The Government of Charles Boone has been severely criticised for the miscarriage of justice which may be said to have cost the innocent Brahmin his life. But it is easy to be wise after the event, to condemn a procedure which, two centuries ago, seemed to be almost irreproachable. That the Government were both prosecutors and judges in this trial was no fault of theirs. Such was the procedure followed, we suppose, in all criminal cases at the time. The extortion of certain material evidence was the work of only one individual, for which it would be unfair to blame the whole tribunal. The conviction of the accused was based on what seemed to them the clearest evidence, admitting of no doubt. They must have honestly believed that Rama Kamati had been guilty of treasonable offences, that he had tried to play the traitor, though at the same time professing to be a friend of the English. That such was the conviction of Charles Boone is made abundantly clear by a passage that occurs in a letter he wrote to the Portuguese General, who ventured to cast doubt on Rama Kamati's guilt:

"It is your pleasure," he observed rather bitterly, "to pronounce Rama Comattee an innocent man, and in some measure to reflect on my proceedings towards him, which as it is not agreeable to the gallant character your Honour bears in the world, might well excuse my silence in that particular, both as it relates to affairs of a Foreign State, and condemns an action which your Honour is a stranger to. However, such is my desire to oblige you and defend my own reputation, that I affirm to your Honour you are misinformed, and he must indeed have had both artful and potent friends to induce your Honour to a contrary belief. The circumstances of the seal, and Captain Antonio Felloes information are but a small part of his charge. I had good reason to be offended with his conduct and to cause an enquiry thereof to be laid before me, and upon manifest proofs passed a sentence, which I am convinced the offender himself thinks mild and much less than his demerit."*

We may well hesitate to believe the last statement, for Rama Kamati appears to have memorialised the Court to revise the

* Forrest's *Selections*, ii. p. 15.

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sentence passed on him; but the above extract shows that the President and Council were of opinion that they were acting in the matter according to the dictates of their conscience and in strict conformity with justice. It may be—indeed, it seems likely—that the Shenvi Brahmin was trying to play a double game, and was in treasonable communication with Kanhoji Angria; but the evidence adduced to prove that there was treason was afterwards found to be entirely false.

"Never even in Indian Courts of Law," says the writer in the *Bombay Quarterly Review* already referred to, "were perjury and forgery used with less scruple and more subtlety. Many years afterwards, when the condemned man pined in a prison, his family had sunk into the depths of poverty, and his judges reposing comfortably in the belief that they had administered impartial justice, it oozed out that vile caitiffs had forged the letters which were produced against him, and attached to them fictitious seals."*

The least that can be said of Charles Boone's Government is that it had been made the tool of a base conspiracy, and as such had been unwittingly guilty of a cruel act of oppression. And what reparation did its successor offer to the family of the innocent man? It seemed disinclined, perhaps out of shame, even to acknowledge the gross injustice of its predecessor's act. This is how it recorded its opinion of a trial which is undoubtedly the most remarkable in the annals of the early history of judicial administration in Bombay: "Though the then President and Council might act consistently with what appeared to them, yet from the information of people it is looked upon by the generality of the inhabitants to have been a rigorous measure." Not only did the inhabitants regard it as a rigorous measure, but the generality of them must have bitterly resented this travesty of British justice. It would have been more statesmanlike if the Government had acknowledged that Charles Boone and his colleagues had erred egregiously in sending Rama Kamati to the "Trunk" for an offence of which, though he may have been morally guilty, he was innocent in law. The Court of Directors also were not liberal enough in making amends to his unfortunate family. The only satisfaction made was the allowance of a small pension to Rama Kamati's son,

* *The Bombay Quarterly Review*, iii. p. 52.

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to whom they paid a further sum of four thousand rupees in compensation, not for the injustice his father had suffered, but "for loss he had sustained by wrong valuation"! We hardly know what to condemn most in this reprehensible affair, the torture sanctioned by Governor Boone, the injustice done to the accused, even on the hypothesis that there was a substratum of truth in the charges, its tardy acknowledgment by the authorities, or the curious stinginess displayed by the Court of Directors in making amends to Rama Kamati's family. We shall let the reader decide.*

A month after Rama Kamati was found guilty and sentenced to life-long imprisonment, the trial of Dalba Bhandari, his accomplice, commenced. Though only second in importance

* A short account of Rama Kamati's life and career appeared in the *Bombay Gazette* recently. As the account is succinct and, on the whole, accurate, we give it below: "Rama (Kamati), as is well known to all who have studied the history of our city in the past, had a very sad and altogether unmerited end. After nearly forty years of prosperity, which he used for the benefit of his community by founding several temples which exist still, and also for that of the city at large, he fell on evil days and evil tongues which wagged very glibly against him. We were in those days much at war with Kanoji Angria, the great pirate on the West Coast, who annoyed us continuously during the first quarter of the eighteenth century from his eyrie in Kolaba, the fort of Alibag, in our close vicinity. The Angria was always on our brain then, and from the President and Governor down to the meanest inhabitant of this town every one was interested in keeping that truculent chief and his sea-dogs from off this island. Boone was then our Governor, an excellent administrator to whom Bombay owes much. But it seems that the Angria was too much on his brains and had upset his otherwise calm and careful judgment. Some persons, envious of the prosperity and high position of Rama—he was put in 1718 in command of all the fighting sepoys against Angria, so much was he trusted by the high authorities—plotted against him, and in 1720 secretly informed Boone that Rama had all along been in treasonable correspondence with the enemy and had engaged to betray this island one day to him, including of course Boone himself and his Council. These unscrupulous foes of Rama forged documents proving his guilt to the satisfaction of Boone, who, having not a shadow of doubt about it, applied the torture to poor Rama, who was brought to a mock trial and condemned. All his property was confiscated and himself imprisoned for life. A rich Bhandari, Dalba by name, also suffered as Rama's accomplice, and thus the conspiracy prevailed in its nefarious aim of ruining a loyal citizen. After his death in 1728 the truth appeared that Rama had been innocent, and that the evidence against him had all been forged and concocted. We hope Boone heard of this in his retirement in England, but we do not know what amends he made to Durga Kamat, the son of Rama, whom he had unwittingly ruined."

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to the above, this trial seems to have attracted little attention, and the published accounts of it are very meagre. But from the original diary for the year 1720, lodged at the Bombay Record Office, we have been able to glean a few details which throw additional light on this affair. The indictment against the accused was published on May 13, 1720, on which date a Consultation was held, when the Secretary, Mr. Owen Phillips, read the following indictment:

"Dulba Bandaree: You stand indicted of severall high crimes and misdemeaners by you done and comitted contrary to your duty and allegiance to the R^t Hon'ble Company, and the known orders and proclamations of their Hon'ble Govr by advising and perswading the inhabitants of this Island to take the passes of the enemy, Conojee Angria, during the present war, and concealing a treasonable correspondence which was carryed on by Rama Comattee with the said enemy Conojee Angria in or about the month of Dec^r, 1718, whereby you have as much as in you lay endanger'd the safety and welfare of this His Majesty's Castle and Island Bombay, the estate and prerogative of the R^t Hon'ble Company, and the life and liberty of the said Hon'ble Govr and all the English inhabitants thereof.

"What do you say; are you guilty of this charge or not guilty?"

It will be observed that Dalba Bhandari's indictment was drawn up in a form somewhat similar to the one used for such purposes at the present day. Though short, it embodied a sufficiently serious charge couched in very clear terms. The indictment was read out to the prisoner both in the English and Portuguese languages, but a copy drawn up in Portuguese alone was delivered to him, probably because he was well acquainted with that language, as were several natives in those days. The accused pleaded not guilty, and said the President was his witness, and related a long story of his services during the troubles with the Portuguese and, lately, in adjusting the articles of peace with Angria's agents. But he was told that these matters were foreign to the charge, and that he should confine himself to the terms of the indictment, and submit his answer the next day: "but," ends the entry in this day's Consultation, "behaving himself disrespectfully, he was checkt for it and ordered to withdraw."

The trial was resumed the next day (May 14th), when the following entry was recorded:

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"This meeting being appointed to go on with the tryall of Dulba Bandaree, he was called in and told by the Presid[t] that his behaviour yesterday was very unbecoming, that he was a prisoner and called upon to answer to a heavy charge, that everything he had to offer in his own vindication should be heard with all the patience imaginable, but that it became him to carry himself more respectfully to the Board."

After this gentle admonition, the evidence for the prosecution was led. The first witness called was Abdulla Barda. It seems that Abdulla was confined, along with the other prisoners, on an information laid against him for having taken Angria's pass, but having confessed his crime and promising further disclosures in the case, was "cleared." Dalba, therefore, objected to the deposition of an accomplice being made use of against him, particularly as Abdulla was kept in prison so long, and there was no knowing if the thumbscrews were applied to him or not, as in the case of poor Govindji in the previous trial. But his objection was evidently overruled, for Abdulla's deposition was duly recorded as follows:

"Abdulla Barda, Moor Inhabitant of Mahim, aged thirty-five years or thereabouts, declares that in the month of Sufar the year before last, Dulba Bandaree sent for him and del[d] him a packett of letters which he, in an obliging manner, desir'd he would send with all the secrecy imaginable to Callaby, which he did accordingly, by Baupojee, Moor Inhabitant of Versova, and that at the time when the guard was sett on Dulba Bandaree's house, he the deponent heard him say, why was a guard put on his house, he was not like Rama Comattee; and that in the time of the warr, he the deponent with his brother having consulted together went to Dulba Bandaree's house, and asked him how they should do to send their boats to sea at a time when Bombay was at warr with Angria, to which the said Dulba Bandaree, Vissu Bandaree, Kensu Bandaree and Sancra Sinay answer'd that they must do as they had always done, which was to take Angria's pass.

"He further declareth that 'tis true that he the deponent spoke to Facuir Bingaree of the letter and the pass which he sent for, for his gallevat was by the way of Versova, and further says that in or about the middle of the last month, he the deponent being at Dulba Bandaree's house about eight a clock in the morning, his brothers Vissu Bandaree and Kensu Bandaree by his order, did (in the presence of him the deponent) deliver a bundle of gold Rup[s] to Narsojee Purvoe, a servant in Mahim customhouse, and order'd him to go to Bassein by the way of Tannah, and deliver the same mony there, and that there went in his company Woyna Butt Braminee: to the truth of which he has hereunto set his name this 17 April, 1720."

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Abdulla's deposition was read to the accused, who said it was all false. The President asked him if he knew anything of Rama Kamati's carrying on a treasonable correspondence with Kanhoji Angria, either directly or indirectly, that had induced him to tell Abdulla Barda that he was not like Ramaji. The prisoner answered in the negative and offered to show that he knew nothing at all of this matter. The next witness summoned was Faquir Bingaree, mentioned in Abdulla's deposition. He seems to have deposed that one day, finding Abdulla Barda

"sad and melancholly, and on asking what he was so very much (troubled) at, he said, 'twas a matter of great consequence which he could not discover to anybody, upon which said Facuir Bingaree told him as he (was) his friend, if he would let him know it, he would discover it to nobody: (upon) which Abdulla Barda answer'd, As you are my friend, I'll trust you the secret, which is this: Dulba Bandaree sent to call me and del[d] a letter, desiring I would send it to Callaby with the utmost secrecy (and) expedition, and that I should trust to him and not discover it to anybody, for that if I discover'd it he should loose his life and everything else: this the said Abdulla Barda told me, enjoyning me to secrecy upon oath, and is all that passed between us. And further the said Facuir Bingaree declares that when Dalba Bandaree and Sancra Sinay went to Trimbuck he the deponent went with them as far as Sophara and then returned, and told them they must take care of themselves the remaining part of their way, to which they answer'd there was no danger, for they had got good security, or a passport."

To the above depositions Faquir Bingaree added the following significant declaration:

"All this I do declare to be truth of my own free will without any manner of compulsion whatsoever, and will always defend and declare the same whenever I am ask'd. Signed by me in Bombay, the 16 of April, 1720.

"FACUIR BINGAREE."

But in spite of this solemn declaration, the prisoner maintained that Faquir Bingaree's deposition was all false, and suggested that money would induce him to say anything. He pointed out that if he had taken Angria's pass to go to Trimbuck, he need not have gone a roundabout way, and even ventured to prove that the letter, which he was supposed to have given to

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Abdulla Barda to be delivered to Callaby, was not sent by way of Versova. In this admission the Court found a good opportunity of entrapping Dalba Bhandari, but this wily Maratha was much too shrewd to be taken in so easily. For when the Court inquired which way the letter was sent, he quietly replied that no letter was sent at all.

The next witness in the case was Govindji, the unfortunate man whose evidence in the previous trial was obtained by the application of torture. He was shown the letter which he was supposed to have written to Kanhoji Angria by Rama Kamati's order, and which he now declared on oath he wrote in the presence of the prisoner, who was privy to its contents. The said letter with its seal was thereupon shown to the accused, and he was asked if he knew whose it was. He answered, with callous indifference, that as his word would not be believed, it signified nothing for him to speak, but being pressed for a reply, he at first desired to be excused, but at last said it looked like Rama Kamati's, though he thought there was some difference. The prisoner again asserted his innocence and said he knew nothing about that letter. Thereupon Govindji was asked "what Ramajee and the Prisoner talkt of whilst he was writing it; he says they walked about the room and talked together, but he does not know what, that the letter was read before the prisoner and delivered to Ramajee, but he does not know whether he gave it to the prisoner or no, neither does he know which way it was sent." Govindji was then ordered to withdraw, and the depositions of Bapuji Columbia and Diego Bareito were read and recorded. These two witnesses were probably called to corroborate the evidence of Abdulla Barda, who was, after all, an accomplice.

This closed the case for the prosecution. The President summed up to the prisoner all the evidence against him, to which the latter answered he would say nothing against it. He was then asked to withdraw, "but," adds the record, "carrying himself very unseemly as he was going out (tho' before he had a caution to the contrary), he was again reprimanded for it and then withdrew." It is curious to note that, throughout the trial, Dalba Bhandari conducted himself in a strange manner, and persisted in his "unseemly behaviour" to the end. His conduct presents a marked contrast to that of Rama Kamati;

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the latter conducted himself throughout with dignity and decorum, whereas his supposed accomplice behaved unbecomingly towards the Court both at the commencement and end of the trial. May it not be that what looked like "unseemly conduct" to the tribunal was nothing more than the spirit of defiance, bordering on desperation, which every prisoner, who is persecuted rather than prosecuted, must necessarily feel towards his persecutors? For it will be remembered that the principal charge brought against Dalba Bhandari was that of concealing the treasonable correspondence which Rama Kamati was supposed to have carried on with Kanhoji Angria—a correspondence which had its existence chiefly in the imagination of the Court, and the proof of which was obtained by the application of torture.

The trial was concluded the same day, when the following entry was recorded in the diary:

"After some debate it was agreed that the indictment has been fully proved against the Prisoner, and that he ought to be severely fined for the same, and then the question was put how much he should be fined. *Resolved and Agreed* that he be fined the sum of six thousand rup^{s} to be paid in three months time, and that he be kept in prison till said sum, and his, and Vissu Bandaree's former debt to the R^{t} Hon'ble Company be satisfyed, and in case he don't pay said sum of six thousand Rup^{s} and his and Vissu Bandaree's former debt to the R^{t} Hon'ble Comp^{a} in said term of three months, that his estate be sold to make it good, and that he be obliged to give sufficient security for his future good behaviour.

"The prisoner being called in, the Presid^{t} told him the Board had taken notice of his unbecoming behaviour during the time of the Tryall, and had considered the severall evidences to the indictment against him, which were so full and clear that they had found him guilty of the same, and then acquainted him with the Resolution of the Board thereon, and he was order'd to be carry'd prisoner to Mahim Fort."

Though the resolution of the Board is clearly worded, it is rather strange that, according to some published accounts of this trial, the exact nature of the sentence passed on Dalba Bhandari and the period of his incarceration are supposed to be involved in some doubt. Two recent writers state that Bhandari was sent to the "Trunk" to keep company with Kamati, though they make no mention of the fine inflicted on him. However,

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both of them may be right, for Bhandari was probably locked up in Mahim Fort until he paid the fine and his other liabilities. That the prisoner was not able to pay his fine for some time after the sentence is made clear by the following entry recorded in the Consultation dated August 13, 1720, the last faint echo of this trial :

"Ambaidas Takidas and Santari Govardhan presented a petition in behalf of Dalba Bhandari, requesting he may be allowed a further time of four months for payment of the fine of Rs.6,000 and his former debt of Rs.1,493-2-37, setting forth that he is not capable of paying it soon, and offering themselves for the security thereof. After some debate on the affair, it was resolved that as the fine we have laid on him is considerable, and that if we make a sale of his estate (agreeable to a former order of Council) the money cannot be soon collected, that their request be granted with this proviso, that if it be not paid by that time they shall pay the interest thereof from this date (13th August, 1720)." *

Government did not forget to reward those who were instrumental in bringing about the downfall of Rama Kamati and Dalba Bhandari. On September 6, 1720, one Hassan Ally made a petition representing that the Government had given him some hopes of having his and his brother's estates (which had been confiscated) restored to him on his coming over to Bombay and giving some information against Rama Kamati. On a consideration of this petition the following minute was recorded :

"It appears to the Board that he (Hassan Ally) has been highly instrumental in making severall discoverys of said Rama Comattee and Dulba Bandaree, their traitorous designs against the Government, and also behaved himself very well in severall actions he has been employed in : Agreed that whereas they have a creditt on the R^t Hon'ble Company's books for rupees two thousand four hundred and sixty, three quarters and seventy-three raes, that after the demands on them are satisfyed, the residue be paid to them."

The Government of Charles Boone could not but have regretted their misplaced liberality when they found that both Rama Kamati and Dalba Bhandari were wrongly convicted.

* Campbell's *Bombay Gazetteer Materials*, xxvi. part i. p. 148.

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That these two important trials must have given rise to something more than mere local excitement can easily be imagined. Both the prisoners were men of position and wealth in Bombay: the charges brought against them were of a serious nature, and the man with whom they were supposed to have carried on treasonable correspondence was one with whom the then Government of Bombay was on terms of hostility. Kanhoji Angria's influence on the sea was unsurpassed: but even on land his name struck terror in many a staunch heart. There were also some other incidents, as we have seen, which invested these trials with almost sensational interest. The inhabitants of Bombay were greatly agitated over the affair, and the Court was obliged to adopt certain measures to restore order and confidence. On the day on which Dalba Bhandari's trial was concluded, we find the following entry recorded in the diary:

"Then the Presid[t] proposed to the Board the issuing out a proclamation for quieting the minds of the people and granting a full pardon to all persons who have hitherto been concerned with Ramajee and Dulba Bandaree in their treasonable practices against the Government, provided they return to their duty, and obedience, and behave themselves as faithfull subjects for the future (Rama Comattee and Dulba Bandaree excepted) which was approved and agreed to, and the Secretary order'd to prepare the same against (in ?) the afternoon for our approbation."

The Secretary lost no time in preparing the proclamation, which was duly promulgated in the town and island of Bombay.

The only point that remains in some obscurity in the trial of Dalba Bhandari is as to whether any amends were made to him or his heirs when the Government of Bombay was apprised of the forgery of letters and fabrication of seals, on the strength of which mainly Rama Kamati was convicted. An entry in the diary for 1724,* when William Phipps was President and Governor of the town and island of Bombay, throws some light on this point, though it does not make it quite clear whether the fine of six thousand rupees inflicted on Dalba Bhandari for his supposed participation in the treasonable correspondence was,

* The diaries for the years 1721, 1722, and 1723 seem to be missing. Mr. Balwant Mahadeo, who has been in charge of the Bombay Record Office for a number of years and who, with the permission of the authorities, was good enough to place all the necessary records at my disposal, informs me that these three volumes never seem to have been lodged at the Record Office.

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wholly or in part, remitted to him. Nearly four years had elapsed since the conclusion of the trial, and the only member of Council who had the privilege of holding office under both Charles Boone and William Phipps was Mr. John Braddyll.. As the entry is of some importance, we shall reproduce it below :

"Dulba Bandaree upon his being pressed for discharging the fines laid upon him by Sr Nicholas Waite on acco^{t} of Tobacco and also the other by the late Presid^{t} and Councill, humbly requests his case may be again taken into consideration in order to relieve him. The which being agreed to, the Board peruses what was thereupon wrote by the late Presid^{t} and Councill, Anno 1716 in his favour, with the Hon'ble Company's orders thereon, also what was wrote then concerning it in the 25th Para. of our letter of 27th August, 1722, in answer to which the Hon'ble Company are pleas'd to say they referr it to us either to moderate or forgive such part of those fines as remains unpaid.

"Mr. John Braddyll, a member of the then Councill, when the fine of six thousand Rup^{s} was laid on him in Mr. Boone's time, is desir'd to give his opinion candidly how far, in his judgment, the said Dolba Bandaree was deserving thereof, to which he declares that two evidences appearing at that time against Dolba Bandaree for his keeping a criminal correspondence with Angria, he could not avoid consenting to fine him as aforesaid; but he was afterwards made sensible said evidences had been practised with and tortured to declare what they did against him, and as it does now appear to him he does think he was fined without any manner of reason.

"And again examining into the cause why Sr Nicholas Waite fined him, which is said to be for mismanaging of the Tobacco farm committed to the care of him and his brother, do find our Hon'ble Masters solely benefitted by what was gained by his moistening the Tobacco, and that thereby the Hon'ble Company in the sale of nine hundred and twenty-one maunds under Dulba Bandaree's management gained one thousand and four hundred Xeraph^{s} more than they did by one thousand and fifty-one maunds during the management of the Veriadores. The Board taking the same into consideration are of opinion (more especially) that the latter fine is altogether a hardship upon him.

"And our Hon'ble Masters having given us the liberty aforesaid, and he remaining now debtor to said fines of Rup^{s} five thousand three hundred and sixty-seven, three quarters and ninety-eight raes, it is resolved and unanimously agreed that on his paying one thousand Rup^{s} he be fully acquitted of the remainder of said fines."

From the second paragraph of the above entry it will be seen that at least one member of the tribunal which found Dalba Bhandari guilty was afterwards convinced of his innocence, and had virtually to admit that the evidence of the two witnesses who

had deposed against him had been tampered with and obtained by means of torture. But although Mr. John Braddyll gave out as his candid opinion that Dalba Bhandari was fined "without any manner of reason," all that the Board decided was that the fine inflicted by Sir Nicholas Waite for his mismanagement of the tobacco farm was "altogether a hardship upon him," not because it was, in the first instance, levied unjustly, but because the then Government of Bombay had actually benefited by Bhandari's mismanagement of the farm. So that the point, whether the whole or any part of the fine of six thousand rupees in which Dalba Bhandari was mulcted as a result of his trial was remitted to him or not, still remains involved in obscurity. Even if some amends were made, they must have been quite inadequate to the ignominy and injustice suffered by him.

(V)

The last trial that yet remains to be described in this chapter is the one recorded in the proceedings of the Court of Judicature of Bombay in the year 1726. The pages of this ancient record are fast crumbling to pieces, and the ink has almost faded. It is with difficulty that the manuscript can be deciphered; a few words in it have become quite illegible. Rama Kamati's trial has been the subject of notice and criticism in several books dealing with the early history of Bombay; that of John Stanmore and Robert Richardson, both mariners belonging to the ship called the *Barrington*, has, we believe, never before been noticed, and if not rescued and reproduced here may be consigned to oblivion for ever. The trial took place in 1726. Nearly half a century had then elapsed since the military broke out in open revolt under the banner of Captain Keigwin; but the spirit of insubordination and the violence and discontent that had characterised the closing years of the seventeenth century were still rampant in the town and island of Bombay. If the conduct of the military was mutinous, that of the mariners was not less reprehensible. The trial of Stanmore and Richardson will show how violently the servants of the Company at times behaved themselves. The information of Captain John Hunter, commander of the ship *Barrington*, was in the first instance submitted to the Honourable William Phipps, Esq., President and Governor of his Majesty's castle and island of

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Bombay, and Council, who referred it to the Court of Judicature for the investigation of the charges. The Court was held for this purpose on Wednesday, June 15, 1726, at which were present the Worshipful John Hope, Chief Justice, Mr. John Braddyll, Mr. George Percivall, Mr. Henry Lowther and Mr. Ephraim Bendall. The Court having assembled, the Register (Registrar) acquainted the Bench that he had received from the Secretary the information signed by Captain John Hunter, commander of the ship *Barrington*, which he had orders to lay before them; that therein the said Captain Hunter charged two mariners belonging to the said ship, namely John Stanmore and Robert Richardson, with several offences, that they had due notice of their trial, and that all parties concerned, having been summoned, had duly attended. Then John Stanmore was called to the bar and Captain Hunter's information was read to him as follows:

"That on Sunday the 5th of June last past, the said Capt. Hunter sent his cockswain to call his boat's crew together, and then to go on board; he returning, acquainted him that the boat's crew had abused him very much, cursing and throwing stones at him, positively refusing to go on board; upon which the said Capt. thought it necessary to apply to the officer of the Main Guard, who immediately sent him a Corporall and two men, who the boat's crew resisted, particularly Jn° Stanmore and Robt Richardson, now prisoners in the Trunk, who drawing their knives threatned the Guard, and the rest of the boat's crew seeming to agree with them in resisting the Guard, the Corporall sent to the Main Guard (for) two more men, when with great difficulty they were carried to the waterside, all the time cursing the Commander and the Guard; the Capt meeting them there, and not only commanding but intreating them to go on board, they absolutely refused, particularly Jn° Stanmore, who cursing the Capt to his face, told him he was a better man than he and bid him kiss his backside, and the like scurrilous language. Notwithstanding this the Capt only bid them go into the boat, and he would go on board with them; they still persisting in their mutiny, the Guard forced them into the boat, and the Capt stepp'd in after them, the s^d^ Jn° Stanmore still continued his abusive language, declaring when it was in his power he would cut off the Capt's^ throat; the Capt bidding him be quiet or he would oblige him, he immediately struck at the Captain and repeated it three several times; the Capt getting up, the s^d^ Jn° Stanmore snatched his sword and broke it, and seizing hold of the Capt attempted to throw him overboard, which he had effectually done, had he not been prevented by the Officer of the Guard then attending; at this being enraged he cursed his Capt publickly declaring that it was but a little way to Angria and a Black Flagg, that he would be revenged;

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Rob[t] Richardson being the forwardest in assisting and abetting s[d] Jn[o] Stanmore in his villanous and mutinous design, being also the person who jointly with the s[d] Jn[o] Stanmore resisted the Guard, drawing his knife; he is together with the s[d] Jn[o] Stanmore a prisoner in the Trunk, and humbly submitted to your Hon[r] &ca. Councill's Justice. There are a great many witnesses to the particulars of this information; several gentlemen of the island, besides the Guard, being present, particularly Mr. Henry Lowther, a member of this Hon'ble Board.

"The whole is submitted to your Hon[r] &ca by,

"Hon'[ble] Sir and Sirs,

"Your Hon[rs] most Obed[t] Serv[t]

"JOHN HUNTER.

"BOMBAY, *June the* 10*th*, 1726."

From the above information it will be seen that the charges against the two prisoners were very serious indeed, particularly those against John Stanmore. Stanmore's gravest offence did not consist in his scurrilous language, his drawing the knife and threatening the guard, even his breaking the Captain's sword or attempting to throw him overboard, but in the statement that "it was but a little way to Angria and a Black Flagg." This amounted to high treason, for Kanhoji Angria was at that time the sworn enemy of the English, hostilities having been formally declared against him. After the information was read to the first accused, and he was reminded of the very heavy charges he had to meet, particularly those dangerous words about Angria, which, if proved, would be deserving of condign punishment, he was asked what he had to say. In reply, Stanmore denied most of the charges and evaded the rest. Thereupon, the Court proceeded to examine the witnesses for the prosecution. The first in the list was Andrew Hunter, the coxswain, whom the Captain had sent to call his boat's crew together and then go on board. He deposed, on oath, to all the particulars mentioned in the information, adding that Stanmore was not in the least drunk but quite sober. He was apparently a very honest witness, for when the Court asked him if he had heard the accused using any such words as going to Angria and a black flag, he declared he had not, nor did he remember that they were spoken in the boat. Hunter was speaking the truth, for the words were uttered not in the boat, but, as subsequent witnesses deposed, in a punch-house by the waterside. For instance, Daniell Hedley, a mariner, deposed as follows:

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"That being in company with Bartholomew Burkes, Jn° Morgan, Jn° Clayton, Patrick Coody and Richard Morphew at the Punch-house on Sunday the 5th Instant, he heard John Stanmore publickly declare in the foresaid company, that if he should meet with any of Angria's vessells, he would joyne him and sacrifice everyone in the *Barrington*, he had a fancie so to doe, and particularly the Capt, and that if he could get to Angria he would neither spare age nor sex but murder all, and endeavour'd to animate the rest to the same villany."

The next witness was Sergeant Beard, who was the first person to go to the help of the Main Guard. He deposed:

"That comming to the seamen at the Punch-house to oblige them to goe down to their boat, they refused, and one Robt Richardson drew out his knife without any sheath, that immediately charging them to take care what they did and not resist the Guard, they were a little quiet and he took from Richardson his knife, they still continuing stubborn, he was reinforced by Sergeant Bryant and more men, when they obliged them to goe down to the waterside, where everything passed as before deposed by Andrew Hunter," &c.

It will be observed from Sergeant Beard's deposition that although Robert Richardson was proved to have actually drawn out his knife, the seriousness of his guilt was appreciably lessened by the fact that he quietly made it over to the witness.

The above evidence was corroborated by the testimony of several gentlemen of the island, who were mentioned in Captain Hunter's information. Messrs. Kellet, Robinson, and Edwardes declared that

"on the beach s^{d} Stanmore continuing his abusive language towards the Capt in a bold, daring manner, the Capt gave him some blows with his cane, which caused some little encounter between them, the Capt's hatt, wigg and cane being forced or falling from him which Richardson gathered up and carried into the boat after him. That when they were in the boat with the Guard, s^{d} Stanmore still more provoked the Capt with his saucy and impud^{t} language, whereupon the Capt rose from his seat and stroke him once or twice with his cane, on which s^{d} Stanmore closed in with the Capt, who falling backward, the s^{d} Stanmore endeavoured to throw him overboard, that the boat not being put off the shoar, the people brought s^{d} Stanmore ashoar, who, tying his hands behind him, he was thus conveyed to the ship."

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These gentlemen must have been much concerned about the safety of Captain Hunter, for they added that

"they were in pain for Capt Hunter, lest being in the power of such villains he should be murthered in the boat or thrown overboard, and used intreatys with him not to go off with the people, but could not prevail, but upon their further importunity he took into the boat a Sergeant and two men and then went on board."

The evidence of Ephraim Aurelius, master of the punch-house, was perhaps the most curious and not the least convincing. He deposed as follows:

"That when the boat's crew returned to his house after having been with the Capt, they each of them took a billet of wood and put it under their seats, swearing, particularly Jno Stanmore, that they would beat the Guard, and knock their Cap$^{t's}$ brains out if he came along with said Guard, and immediately joined hands, thereupon swearing to stand by one another, and after some time they mutually agreed that if any one of them should afterwards for this fault be tyed upon board in order to be whipped, the rest should immediately goe and cut him loose and stand by him and not suffering him to be punished, and upon this they shook hands. He says Stanmore was the most active man in this combination and that he did not appear in the least drunk any other way than by a violent passion which he vented in very scurilous language against his Capt, threatning and cursing him for his treatment on board and the like."

A conspiracy had evidently been hatched among the crew in the punch-house to break out in open revolt against constituted authority, the moving spirit being John Stanmore.

The evidence for the prosecution having closed at this stage, John Stanmore was acquainted by the Court that they had gone through the evidence and that they were too well convinced of what he stood charged with by his Captain, and that even that portion of the evidence which he stoutly denied, namely, the words spoken in the punch-house threatening to join Angria and encouraging the other seamen to do likewise, was very probable, though only Hedley had deposed to it.

"The deposition," they added, "of the Master of the Punch-house of his and the rest of the crew's behaviour, and the combination they entered into to knock their Commander in the head and to stand by one

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another, being of the same nature, and is only the unhappy forerunner of Piracy, which generaly commences in murder, is continued in the same barberous way, and concludes in a wretched and infamous exit."

Stanmore was then called upon to enter upon his defence. The wretched man saw that his fate was practically sealed, that the evidence was too strong for him to deny, the charges too clear to evade, and that the judges were convinced of his guilt even before they had given him a hearing. He pleaded that

"it was through passion he was guilty of what had happened, that having been boat-keeper, he had no victuals all day neither had he drank any liquor, which was the cause that enraged him and made him [at first ?]* refuse to goe off till he had seen and complained to his Capt. That the Captain [had ?] struck him two or three times with his cane in the boat, that made him lay [hold ?] of him to prevent his beating him any more, that the sword was broke by accident, that this was the first fault he had been guilty of, and he was sorry for it, and begged the Capt's pardon, concluding that he had always done his duty and behaved well and never had any disposition to be disobedient and mutinous; he denyes he ever spoke those words charged upon him by Hedley or that he entered into the combination at the Punch-house as deposed by Ephraim Aurelius."

If Stanmore had stopped here and thrown himself upon the mercy of the Court, some indulgence might have been shown him. But he went farther and protested more than he could prove. He called certain witnesses to testify to his general good behaviour in the past, but their evidence only aggravated his guilt. For instance, one Mr. Flowers, chief mate of the *Barrington*, having been summoned to attend at the request of the prisoner, declared on solemn oath that he knew no good of him (Stanmore), that he bore a very bad character on board, being very troublesome and fractious, that he had once before on board struck a superior officer and in the Gulf of Mocha had attempted with several others to run away with the ship's boat, and that if the prisoner had nothing to eat or drink that day it was through his own fault. The witness concluded his testimony regarding the character of the accused by saying that he had very good reason to believe, from the behaviour of the prisoner and the account he even gave of himself, that he was of "vile

* This word and the two following ones in brackets are not quite legible in the MS. record.

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and dangerous principles." Curiously enough, all the seamen present agreed with their mate's account of the prisoner and no one had a good word to say of him. Captain Hunter was then called upon by the Court to give his own account of the prisoner at the bar. He deposed as follows:

"That observing him very often caballing on the Forecastle, and having good reason to suspect him, he had him removed into the after Guard, that he might always have him in his eye; that one great reason he had to be suspicious of him was a declaration he one day made before his Purser, Mr. Samuel Brunts, and two other persons, viz., John Hart and Ebenezer Wilson, of a very vile action of his in the Archipelago. The crew of a Saittee, whereof he was one, having quarelled with some Turks freighters and passengers aboard, cut them in pieces, seized the goods, sold them in several ports, and shar'd the amount of the said goods and the vessell amongst them, being near fifty thousand pounds in value, at the same time bragging that with his own hands he killed three of the said Turks, and that he would doe it again without any remorse. . . . That his mate and mariners had given an account of his, the s[d] Stanmore's, behaviour and character on board, which with what the Court had now before them was a demonstration how vile and dangerous a fellow he was, as he humbly conceived too dangerous to be trusted with his liberty on board any ship; that he hoped he would now be restrained from doing more villany, and that he would sensibly be made to feel the reward of his past actions."

The testimony of the commander was as damning to the accused as that of the mate and his fellow-mariners. Indeed, it was far more damaging to him, for Stanmore's participation in that ghastly affair in the Archipelago was for the first time brought to the notice of the Court. Captain Hunter did not content himself by merely asserting what he had heard from the purser. He got Mr. Samuel Brunts to put in writing all the facts as he had heard them stated from the prisoner's own mouth, and summoned both John Hart and Ebenezer Wilson to swear to the truth of the statement. This was annexed to the proceedings, which were eventually submitted to the Governor and Council, presumably for confirmation of sentence. The purser's declaration is such a curious document, and throws such a weird light (reminiscent of Defoe and the *Voyage Round the World*) on the irresponsible conduct of British seamen in those days, particularly of the type of John Stanmore, that we are tempted to quote it in full:

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"*The Declaration of Samᵘ Brunts, Purser of Ship 'Barrington.*

"Sheweth

"That on the 8th day of April, 1726, Jnº Stanmore did on the Forecastle declare before me, the Deponent, Jnº Hart and Ebenezer Wilson, that in the year 1714 he sail'd with one George Aptall (a Greek native of Smirna but educated at the University of Oxford and naturaliz'd), commanding a Saittee called the *Mary*, who was freighted to Moors, Mercht^s of Tunis, by Thoˢ Bradley, Esq., Consul at Canea, from that place to Allexª and thence to Tunis; in their passage from Allexª thither, there arose a disturbance on board the said vessell between the Mercht^s Freighters, their passengers (consisting of about 50 persons) and the Saittee's Company, wherein the latter plead that the former rose upon them, and they in the defence of lives kill'd many of them, setting the rest a shore at the Island of Christiana (but by the best account they most of them swam for their lives); the vessell was immediately thereupon carried to Malvasia on the Island of the , the said George Aptall, and his crew, where they victualled and water'd, and thence sailing along shoare sold the goods of the murder'd and dispers'd Moors, which amounted to about £50,000, but the bulk of the cargo with the vessel was sold at Ancona, it being without the knowledge of the Saittee's Company, till they came up to the Gulph of Venice, as he the said Jnº Stanmore pretends, but nevertheless he confess'd at the same time that he shar'd in the produce thereof as did they all, as also, that with his own hands he did with a scimeter, which he had taken from an Algerine, kill three Moors at one stroke each; the goods and vessell being sold as above, and the money shar'd, they all shifted for themselves, Jnº Stanmore taking his tour through Itally came to Livorno, whence he went passenger home to England. He also declared scoffingly that he had heard that Capt Thoˢ Masters in the Smirna Mercht coming the next ship to Tunis, after the Tunizeens had news of this (barbarous and pyraticall) action of theirs, was detained ship and men for a year there by the Bey of that place and with a great deal of trouble gott clear of them at last. Dated on Board the *Barrington*, this Eighth Day of April, Ann. Dmn. 1726.

"Samˡˡ Brunts.

"Wee Jnº Hart and Ebenezer Wilson do confirm the above declaration and hereunto doe sett our hands, Bombay, June 22d., 1726.

"Jno Hart.
"Ebenezer Wilson."

When Stanmore was asked about the truth of the above declaration, which was read out to him, he acknowledged it to be, in the main, true, but added in his defence that it was the Turks who took the aggressive first and fired two pistols at their Captain, whereupon they attacked them in the manner specified

by Samuel Brunts. But when pressed as to what became of the vessel and the goods upon it, he equivocated, and pleaded that he was only a seaman and did what the captain bid him. The Court, however, had had enough of his prevarication and ordered him to withdraw.

Then came the turn of Robert Richardson, who was put up at the bar; the charge having been read out to him, he was asked to submit his plea and enter upon his defence. His guilt, however, was of a less serious nature, and there were no aggravating circumstances against him. In the most penitent manner, he acknowledged his fault of being drunk that day, which, he pleaded, was most of, if not all, his crime. He denied being with the boat's crew at the punch-house, much less caballing with them in their despicable design, but admitted drawing out the knife when, he urged, he was too drunk to know what he was doing. Moreover, he had not abused his Captain, nor was he violent. He humbly begged pardon and promised never to do the like in future. Both the Captain and the chief mate gave him a good character and recommended him to the favour of the Court. The Court thereupon promised to take their commendation into consideration, and ordered him to withdraw.

Here the trial practically ended. Witnesses for the prosecution as well as defence had been duly examined and evidence on both sides carefully sifted. The Chief Justice made a summary recapitulation of the whole evidence against Stanmore, showing the gravity of his offence and the probability of his having committed it.

"A contempt for and disobedience to superiors being what destroys all society," his Honour observed, "and is the step that naturally leads to sedition and mutiny; that Stanmore had gone very far towards it, for not content with disobeying his Cap[t] and using him contemptuously and scurilously with vile language, he had presumed to assault him and attempt his life, without the least excuse, for himself being sober, and without any occasion given; that what Hedley and Aurelius deposes makes the matter much worse; the combination entered into and Stanmore's threatning to join with Angria if he met him, and had opportunity, savouring very strong of Mutiny and Pyracy, the information of Brunts adding to the character and making it appear very notorious and black."

After briefly summing up the evidence, the Chief Justice desired the opinion of the Justices whether Captain Hunter had

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made good his charge against John Stanmore. And the Justices being unanimously of opinion that he had, the Chief Justice asked them to consider what punishment should be awarded to the accused. We find the sentence thus recorded in the proceedings:

"After some debate, it was unanimously agreed (Mr. Bendall, the Puisne Justice, giving his opinion first) that the s^{d} Jno Stanmore for his said offences forfeit all his wages on board ship *Barrington*, that he be three several days publickly whipped, viz., on Saturday the 25th Instant to receive 39 lashes along the side of each Europe ship (the *Cadogan* and *Barrington*), the Satturday following twice 39 at two Gates of Town, 39 at each; and the next Satturday the same, once at the other gate and once at the Punch-house; and to suffer imprisonment six months and be afterwards sent to England by the first opportunity."

The question as to what punishment Richardson deserved was next considered. The Justices, in consideration of his truly penitent behaviour, and the fact that it was his first offence, which he had apparently committed through the evil effect of liquor, and not from malice or any ill disposition, and also having regard to the excellent testimony both his Captain and chief mate bore him, it was unanimously agreed that he only receive a slight chastisement for the neglect of his duty, and it was accordingly ordered that the Marshal carry him to the Bunder and there at the waterside give him eleven lashes and then deliver him to the orders of his Captain.

Thus ended this extraordinary trial. The whole proceedings in the case were submitted to the Right Honourable the Governor and Council of Bombay, as is made clear by the following entry:

"The Marshal was then required to bring his prisoners on Wednesday next being the 22nd Instant to the Barr of this Court to receive their sentence, and accordingly on Wednesday the 22nd the Chief Justice pronounced sentence upon them and after having sworn Mr. Sam^{ll} Brunts, Jno Hart and Ebenezer Wilson to the anexed information, adjourned the Court. The whole is submitted to your Honr^{s} &c. by

"Hon'^{ble} Sir and Sirs,

"Your most Obed^{t} Serv^{ts}

"JOHN HOPE, Ch. Just.
"JN^{O} BRADDYLL.
"GEORGE PERCIVALL.
"HENRY LOWTHER.
"EPHRAIM BENDALL."

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CHAPTER X

LANDED PROPERTY IN EARLY BOMBAY

WHEN Mr. Francis Warden,* Chief Secretary to the Government of Bombay, published his able and elaborate Report on the Landed Tenures of Bombay in 1814, he laid not only the authorities under obligation, but lawyers as well as historians also, who readily acknowledged the debt of gratitude they owed him. The report bears ample testimony to the research and learning of its author in his treatment of a subject which, till then, was enveloped in obscurity. At the time of preparing the report, more than a hundred and fifty years had elapsed since the English first obtained possession of the town and island of Bombay, but no attempt was made during that period to trace the history of landed tenures from its commencement. Warden's exhaustive report may be said to have supplied the needed elucidation.† Not that he was the first in the field. Captain

* Warden was a voluminous writer. He is said to have compiled a volume of Selections from the Records of Government, and written accounts of the province of Oman, the Arab tribes of the Persian Gulf, and a number of other tribes and provinces.

† In an interesting contribution on "The Internal Economy of Bombay a Century Ago, 1726–1740," in one of the early volumes of the *Bombay Quarterly Review*, a writer speaks of Warden's report in the following scathing terms: "Upon this some labour was evidently bestowed, but the information contained in it is so scanty, the style so bald, the arrangement so defective, that it is quite unworthy of a Secretary to Government, and would probably have been as well prepared if undertaken by one of the clerks in his establishment. Although we have frequently referred to it when collecting materials for the present article, we have usually been compelled to turn from it for our supply to other sources." This unfavourable verdict was passed half a century ago. Much water has passed under the bridges since then, but no more light has been shed on the subject of land tenures in Bombay. On the contrary, the matter seems to have grown more obscure by lapse of time. Our sources of

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Dickinson had anticipated him in the investigation of the various tenures under which land was held in Bombay, particularly that part of it which was situated within the precincts of the Fort. Dickinson's report, however, was far from complete. Not only was the scope of his inquiry restricted, but he had refrained from going back to a remote period, because, he observed, "it will perhaps be fully sufficient for the present purpose to show that the Hon'ble Company were in possession, it is difficult to say of what portion, of the fort so long back as the year 1720." Warden, on the contrary, carried his researches to the cession of the island by the Crown to the Company, and made a minute examination of the rights and interests of Government, on the one hand, and those of private individuals, on the other, in the landed property in Bombay.

"A comprehensive review of this nature," he remarked, "is essential to that full consideration of the subject which its great importance demands; and to the want of such a review I attribute the doubts and uncertainties under which we at present labour, in regard to the line of conduct to be pursued towards the landholders." *

And in order to make this review as clear and comprehensive as the materials at his disposal would permit, and to elucidate the policy adopted by Government, at various times, in the assignment of lands, as also to render his account intelligible and interesting to the general reader, he not only inquired into the nature of the tenures and the rights and duties of tenants, but gave a brief summary of the principal events which constitute the early history of Bombay. We, too, have attempted to trace the history of the English in Western India before speaking of the efforts they made in introducing the administration of justice and establishing Courts of Judicature in the town and island of Bombay. In doing so, we have touched upon certain matters which directly pertain to the origin and evolution of landed property, as, for instance, the treaty of Humphrey Cooke in 1664 and the convention of Gerald Aungier in 1674. We propose to deal with these in fuller detail here. We shall attempt to trace the history of landed tenures from a period even

information are few, and we have no hesitation in saying that Warden's report has proved perhaps the most fruitful source for our purpose.

* *Landed Tenures of Bombay*, Government Selections, No. 64, N.S. para. 2.

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earlier than that fixed upon by Warden, from the time, in fact, when the Portuguese held sway in and around Bassein, and the Manor of Mazagaon and the island of Bombaim were rented to two eminent subjects of the King of Portugal. Two important points should be noted at the outset. Though Warden's report throws a good deal of light on the subject, it was not possible even for him to state with any degree of certainty the exact nature and extent of the landed property, and the different tenures under which it was held at the date of the cession or when Aungier's Convention was signed. The rights of private individuals and the interests of Government were so inextricably mixed up that, though several attempts were made to distinguish and define the claims of the two parties, disputes regarding the ownership of land continued almost up to the middle of the last century. Humphrey Cooke was, as we have already seen, largely responsible for this deplorable state of affairs. While accepting the terms of the treaty which was forced upon him by the Portuguese in 1664, he had omitted to take the obvious precaution of ascertaining the King's rights in the property which Catherine of Braganza had brought to Charles II. as part of her dower. Moreover, Cooke's dishonesty had made the confusion worse confounded. He was proved to have granted fictitious title-deeds to those who offered him handsome bribes in the honest belief that they were given undisputed possession of valuable estates. When the Crown ceded the town and island of Bombay to the Company, the latter could hardly have known the extent and nature of the property ceded, for even the Crown's rights had not then been ascertained. By far the greater portion of the property consisted of low-lying land, mostly swampy, and occasionally covered by the sea, or uncultivated land on the barren ridges, such as the Malabar, Warli, and Chinchpogli Hills. Almost the only valuable property, a part of which was cultivated or considered fit for cultivation, was that lying in and around the Fort. The Portuguese claimed a large share in it, but their claims were summarily rejected by the Company. Disputes arose in consequence, which were not settled till Gerald Aungier came on the scene and entered into an agreement with the *povo* of Bombay. It is worth noting, however, that Aungier's Convention referred only to those lands which came under the designation of fazendary lands, paying pension and tax,

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and not to foras, or salt batty grounds. These had not come into existence at the time, for they were recovered from the sea some years after. The disputes regarding salt batty grounds continued long after the povo of Bombay came to a settlement in 1674, whereby the Company waived all claims to the estates then in the possession of the inhabitants and confirmed their rights in them, on the latter paying a yearly contribution of twenty thousand xeraphins to the Company, including the quit-rent or foras paid at the time. Efforts were made, from time to time, to settle disputes regarding foras lands, but without success. The Government adopted a policy of *laissez-faire* in the matter. Whenever the question arose they tried to shelve it as long as they decently could, or merely patched matters up temporarily. The Court of Directors also did not seem to be anxious to face the situation, which was growing worse almost every year. In short, the authorities, both at home and in India, avoided settling the land question once for all. Landed estate has been likened to an animal with its mouth always wide open, and it was allowed to remain in that position till it swallowed the greater portion of the most valuable property in Bombay, the ownership of which was undoubtedly vested in the East India Company. The result was that landholders as well as tenants surreptitiously encroached upon property to which they had no more right than the man in the moon. For instance, when a "curumbee," or cultivator, was given a plot of ground by Government, with the object of encouraging him to settle down on the island, he tilled it for some years, appropriating to himself all the produce of the land. The fruit of his labours brought him a little money and filled him with ambition to possess himself of a shed which he could call his own. So the ground primarily intended for cultivation was quietly converted into a building site, without formal sanction of the authorities. Getting richer and bolder, the "curumbee" would next think of parting with the possession of the land for a consideration, or bequeathing it to his heirs. The purchaser did not press for good title-deeds, and the fraudulent transaction was not brought to the notice of the Government. When the latter, however, claimed possession of the land, their claim was resisted tooth and nail, the owner maintaining a permanent and irrevocable interest in the soil. The audacity of the usurper, in this instance, was as great as the

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apathy of the Government. That we have not drawn a fanciful picture of the situation may be verified by the following passage from the report Mr. Smyth, the then Collector of Bombay, laid before Government as late as 1790. Therein Mr. Smyth had traced, at some length, the origin of the tenures of lands which belonged, by right, to the Government, but which were encroached upon by private individuals, who refused to part with them. Mr. Le Messurier, who was Advocate-General of Bombay in the middle of the last century, referred to this important document while submitting his own Report on Foras Lands on the occasion of a memorial presented by certain inhabitants of Bombay, complaining that lands held by them on the foras tenure had been appropriated by the Government as a site for a hay-market, without compensation. In the course of his observations the learned Advocate-General stated, quoting from Mr. Smyth's report:

"The report states, also, that others disputed the power of the Company to prevent their converting the grounds they held for cultivation into building ground, or to dispossess them; and that the greatest part of the grounds had become the apparent property of the richest part of the Natives; that the ground had been allowed to descend to the heirs of the occupants; that the rights of the freeholders were claimed by the tenants, subject only to the payment of the foras rent to the Company; that the lands themselves had in several instances (some of which Mr. Smyth alludes to) been taken into execution under process from the Mayor's Court for the payment of debts."*

It will thus be seen that the rights of landholders, who were in no better position than tenants-at-will, were actually recognised by a court of law. In 1805 the question came for judicial investigation before the Recorder's Court, Sir James Mackintosh presiding, whether a certain plot of land allotted to one Nasserwanji Cowasji by the Government belonged, by right, to the Company or to the plaintiff, in whose occupation it was at the time. Mr. Thriepland, the then Advocate-General, argued the case for the Company, who were the real defendants, with great ability, and so far convinced the Court of the genuineness of the official claim that judgment was given in favour of his clients. But there can be no doubt that the Recorder decided

* *Foras Lands in Bombay*, Government Selections, No. 3, N.S. para. 14.

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the case in favour of the defendants with considerable reluctance. For although he declared the *law* to be with the Company, he evidently thought that *equity* and *justice* were on the side of the plaintiff. In delivering judgment, Sir James Mackintosh observed:

"Though the eventual right of resumption might be known to many or most of the inhabitants, the Company certainly suffered an expectation to be created, and very generally entertained, that the right in question was one, the exercise of which was so *exceedingly rare* on their part as not to require being very much or at all taken into account in the transmission of property from one individual to another; hence *the large sums so frequently paid* on such occasions; hence the *loans* advanced on the security of such lands, and the imposing credit which they enable their possessors to obtain. While such things are familiarly known and *daily brought under the eye of Government*, the unwary occupants may not have regular conveyances, enabling them to maintain possession in a Court of Law, but they have to allege a tacit acquiescence, a presumptive right, which in the eye of commerce (*sic.* conscience?) and morality give them almost an equal claim to subsequent forbearance, and must, in every case of resumption, where an adequate price has been *bonâ fide* paid, make the act appear and be felt as a grievous hardship, if not an open and downright injury." *

But we are afraid we have strayed from the point at issue and anticipated events. The only other point remaining to be noticed is the value of landed property which prevailed in Bombay in the sixteenth and seventeenth centuries. Its insignificance might have been one of the causes which induced the Government to remain indifferent to their interests in the soil for a very long time. Suffice it to note that on the lands which Aungier bartered away in 1674 to the inhabitants of Bombay for an annual quit-rent of £1,200, stand to-day buildings of the value of several millions sterling, and that early in the eighteenth century the whole of Malabar Hill was let on lease at a yearly rent of Rs.150.

Simao Botelho, the eminent Portuguese statesman who played such an important part in the political and religious history of Western India about four hundred years ago, observes, in his valuable *Tombo*, that from the year 1534, when the province of Bassein was ceded to the King of Portugal by Sultan Bahadur

* *Foras Lands in Bombay*, Government Selections, No. 3, N.S. para. 20.

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of Gujarat, to 1547, the land was let or rented annually for a fixed sum of money.

"Most of the villages," writes Da Cunha in his *History of Bassein and Chaul*, "were given for an insignificant quit-rent, generally in perpetuity, to the Portuguese families resident in Bassein and Goa. The possessors of these villages were to all intents and purposes like the feudal lords of the mediæval times."

Da Cunha then quotes Gemelli Careri thus:

"If the peasants take the land to till in the place of their abode, they pay no other duty to King or landlord (though some exact some days of personal service); but those that hold in fee pay an imposition according to what they are worth, every four months, to the King's factors or treasurers, residing in all the northern cities. These villages are given in fee to soldiers who have served long, or to other persons who have well-deserved of the Crown, for three lives, after which they generally endeavour to renew, but to the Church they are given for ever."

This system of land assessment was called by the Portuguese *arrendamento*—that is, hiring or renting. Da Cunha conjectures that such must have been the traditional system of collecting the revenue in India, enforced not only during the administration of the Mahomedan rulers, but perhaps prevailing at the time of Bhima Deva, or even earlier.* In 1548, however, the system seems to have undergone a drastic change. D. Joao de Castro, who was then Viceroy of Goa, found himself in a predicament. The Portuguese treasury was not in a flourishing condition, and the income derived from the newly acquired territory was not large enough to defray the cost of administration. There were a number of soldiers who had distinguished themselves in the siege of Diu and elsewhere, but the Viceroy had nothing to offer them by way of reward for their eminent services to the Crown. Castro, however, combined originality of ideas with the boldness of a pioneer. He suggested that the land, in and around Bassein, which was lying fallow, should be parcelled out among these brave soldiers, who might be allowed to till, plant, and improve it, and also to appropriate the produce of the soil, at the same time holding it in the name of the King and paying a small

* *The Origin of Bombay*, p. 215.

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quit-rent of from 4 to 10 per cent. of the ordinary rental. This plan had the merit of solving a problem which might have taxed the resources of the Portuguese Government. The Viceroy expected his officers to defend the country as well as colonise the territory of Bassein and its dependencies. The new system was known as *aforamento*, a Portuguese term which had its origin in the Latin root *foro*, meaning quit-rent. It is true that in course of time this system was much abused by the *foreiros*, as the tenants holding land under this tenure were designated, but it served its purpose very well then. It involved, like the feudum of ancient English law, both a *right* and a duty—the right to possess the land and enjoy its produce, the duty to pay the small quit-rent and offer military service to the King. But in the eighteenth century the *foreiros* claimed the rights without the duties. "Like the degenerate Romans," remarks Da Cunha, "they had lost the virtues of their ancestors, and were, as in the time of Nero, only clamouring for *panem et circenses*, bread and spectacles." It may be noted that Simao Botelho strongly objected to this novel experiment in the administration of agrarian laws, mainly on the ground that it would cause considerable loss to the treasury. But Joao de Castro had the support of the King, who must have felt that there was no alternative for him but to give effect to the suggestion of his Viceroy. The grants under the new scheme were rather lavishly distributed, and the system itself was extended to Bombay and the neighbouring islands which subsequently came under Portuguese dominion. Villages, varying in number from one to six, and even whole islands, were given to private individuals who had rendered their country signal service. Botelho again protested against the too rapid increase of such grants, and suggested that instead of villages and islands being granted, "drowned" lands—that is, lands liable to be flooded by sea, or swamps—should be allotted in perpetuity, free of rent, reserving only a small quit-rent for the State. This was an admirable suggestion, which would have increased the revenue of the Crown, but it fell on deaf ears. A similar proposal was made in 1677, when Bombay was under the British, but it was long before the swampy lands were reclaimed and the valuable property on which modern Bombay stands was recovered. In 1679 the Court of Directors ordered that the marshy grounds should

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be drained and rendered fit for agriculture, and again in 1703 they wrote, more specifically, as follows: "The Government has been directed to encourage speculators to stop the breaches where the sea overflowed the island, by allowing them to hold the land they recover for a term of years free of rent, reserving only a small quit-rent to the Honourable Company." * So the spirit which animated Simao Botelho to make the suggestion had not died out with him.

Under the system of aforamento, the island of Monbaym, as Botelho styled this city in his *Tombo*, fell to the lot of one Mestre Diogo. In 1548 Diogo paid an annual quit-rent of 1,432½ *pardaos* to the Royal Treasury, but in the *Foral*, or register of rents, the income of the island was stated to be 14,400 *fedeas*,† and, later on, 1,375 *pardaos*.‡ The next occupant of the manor of the island of Bombay was the famous Portuguese physician and naturalist, Garcia da Orta. The exact date of the grant to him is not known, but Da Cunha surmises, on collateral evidence, that it must have been somewhere about 1554–55. Garcia da Orta refers to Bombay, in his *Colloquios*, as the island the King granted him as a gift on his paying a fixed amount of quit-rent. Here, the lordly *foreiro* must have lived in some style, having built for himself a splendid manor-house on the spot where the arsenal now stands, behind the Town Hall. It was surrounded by spacious pleasure-grounds and a beautiful garden which captivated Fryer's fancy and excited his admiration. Besides Bombay,§ several other places

* Government Selections, No. 64, N.S. para. 200.

† The *fedea* was a nominal coin of local currency in Bassein, its value being 15 reis. Four fedeas made one *tanga*, while five tangas in silver went to a *pardao*, which was equivalent to 300 reis or nearly 8 annas. Tanga or *tanka* was a coin largely in use in Gujarat before the advent of the Portuguese, being $\frac{1}{100}$ of a rupee in value. The term "fedea," though not the coin of that name, is still in use in Bombay, and represents 4 pies in value, just as *dukani* is still with us, being worth 2 pies, though the coin itself must be exceedingly rare.

‡ *Pardao* was the popular name given by the Portuguese to a gold coin from the native mints of Western India, which entered largely into the early currency of Goa, and the name of which afterwards attached to a silver money of their own coinage, of constantly degenerating value (*Hobson-Jobson*, p. 837).

§ It should be noted that when we speak of Bombay in this connection we do not mean the large tract of land which lies to-day between Colaba and Mahim, but one of the seven districts into which the island was then

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were rented to wealthy landlords. For instance, the caçâbe of Maym (Mahim) was rented for 36,057, and that of Karanja for 80,000 fedeas. The island of Salsette fetched 285,725 fedeas, while the caçâbe of Thana brought in an income of only 75,626. There was yet another important district of what now constitutes the town and island of Bombay, namely, the Manor of Mazagaon, which, during the first half of the sixteenth century, fetched not more than 8,500 fedeas. But it was destined to rise in importance and value, as we shall presently see.* It will be seen from the above that the ancient constitution of Bombay and other islands under Portuguese dominion was *feudal*.† The King allotted large tracts of land, even villages and islands, to private individuals on their paying a small quit-rent, in return for which he expected military service from them. These grants were generally limited to a certain number of years or lives, but in cases where the services of the *foreiro* were regarded as particularly distinguished, or where the grantees represented religious orders, they were made in perpetuity. Not only were the tenants themselves expected to render service in time of need, but they were supposed to be always ready with a small militia of men and other resources for the defence of the country.‡

divided, the other six being Mahim, Parell, Vadela, Sion, Veroly (Worlee), and Mazagaon. Sir Michael Westropp thought that the site on which is built the present native town was probably styled Bombaim in those days.

* When the island, or village, of Mazagaon, as it was then styled, was leased to one Antonio Pessoa under the tenure of *aforamento* in 1548, Simao Botelho cited it as an instance of the excessive liberality of Joao de Castro in granting lands to private individuals.

† In this connection it is interesting to note what a writer says about the Mahrathas in his account of the war which was waged in the eighteenth century between them and the English: "The Mahratta nation consists of many tribes governed by Rajas, acknowledging the sovereignty of the chief Raja, who resides at Sattarah, and paying a rent to him; in other respects, they are like the ancient feudatories in Europe, independent; each governing his own subjects, being at the head of armies, and doing themselves justice upon any wrongs offered by their neighbours, but bound by a certain service when called on by the chief Raja, and furnishing a number of troops both to defend him against enemies, or to assist him in expeditions into the neighbouring provinces" (*An Historical Account of Bombay, 1781*, p. 67).

‡ It was probably due to this custom that, according to Antonio Bocarro, the *caçâbe* or the principal place of the village Mombaim, as he calls Bombay, had, in 1634, eleven Portuguese *casados*, or married settlers, and some blacks, making altogether seventy musketeers able to serve in war.

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Let us now pay a visit to the Manor * of Mazagaon as it existed in the sixteenth century, and examine the different articles of the Letters Patent by which the grant was made, or rather renewed, in 1637 by Don Philip, King of Portugal, to Bernardino de Tavora. Sir Michael Westropp observes in his judgment in the case so often cited in these pages that, prior to the cession of the island to Charles II., this is the only patent about which authentic information is available, and for the details of which he was indebted to Mr. Warden, who has annexed a copy of its English translation to his report on Landed Tenures of Bombay. The Manor of Mazagaon was leased to one Antonio Pessoa in 1548 for the term of the life of the survivor of the lessee and his wife. On his death in 1571 (when, presumably, his wife had also died), it was again leased to Lionel de Souza, a man who had distinguished himself in warfare and was married to Donna Anna Pessoa, the daughter of the original lessee. The Royal Charter conferring the manor on him stated that having regard to

"the great services that the said Lionel de Souza had done to me in the parts of India, where these many years he serves me, continuing in my service and as a Captain of his vessels at his own expense as often as it offers, as well in company of my Viceroys and Governors of India, as in any other things with which he is charged by the said my Viceroys and Governors, by reason of the great experience that he has of the country, and the length of his service therein; and I having all regard both to his age and the obligation I am under to him for his merits . . . it seems to me good, and it is my pleasure in pursuance thereof, to confer a favour on the said Lionel de Souza, and to let him the said village Mazagaon to be holden as Emphyteusis for ever (*em fatiota para sempre*), and that there be paid to me as quit-rent for the same every year, at the quarters and times established, as well by him as his heirs and successors who conformably to this my charter may succeed him, one hundred and ninety-five Pardaos of gold and three tangas of silver at the rate of six double pices and one quarter the silver tanga, which is the same that the said Antonio Pessoa, his father-in-law, paid. . . ." †

* Sir Michael Westropp hesitates to say if Mazagaon could be considered a manor within the technical meaning of that term according to English law, *e.g.*, as carrying with it the right to hold a court baron and other like privileges. And as a manor, in that sense, depends entirely on immemorial custom, and cannot be created by Crown grant, it is difficult to say that it could be. Parliament even cannot create a manor, though it might create an estate to which manorial incidents might attach, in imitation of a true manor.

† Forrest's *Selections*, ii. pp. 359–360.

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We find from the above that the famous sea-captain, who had served his Majesty Sebastian so faithfully, was granted the village of Mazagaon, which, adds the charter, "is in this island of Mahim,* dependency of Bassein," on the same terms regarding payment as it was leased to his father-in-law, but he was to hold it by the tenure of emphyteusis. The question naturally suggests itself here—what was emphyteusis? Peculiar in its origin and development, the emphyteutic tenure dates back to a very remote period. It is supposed by some to have been the ancestor of the modern lease, and even of the feudal system, as it was a favourite type of tenure for settling Roman veterans on the frontiers, where they naturally came in contact with the barbarians. But these are only theories; the proved facts about emphyteusis will be found in any commentary on Justinian's Institutes. It was a tenure which was unknown to the classical Roman Law, and grew up in the later days of the Empire—probably about 100 A.D. onwards. Its main feature was that the tenant, unlike the ordinary hirer in a contract of *locatio-conductio*, had, like the English lessee, technical *possessio*, and was capable consequently of bringing "real" actions and interdicts instead of being obliged to rely on his contractual rights. In this he resembled the borrower on "precarium" and the *bonâ fide* possessor of goods which are really not his to possess. He had the specific action technically known by the term "emphyteuticaria"; he paid, generally, a rent called *pensio* or *canon*, and his tenure was normally for a long period or for ever. This was a very convenient arrangement for the corporations, ecclesiastical and other, which began to be great landholders about the beginning of the Christian era, as it put the tenant practically in the position of an owner, with whom they had no more trouble as long as he paid rent. The ordinary hirer, under the classical contract of *locatio-conductio*, left the lessor under the burden of many contractual responsibilities. Emphyteusis was, we believe, regarded in the nature of a contract, not as the creation of a real right, that is, a conveyance; but it was an "innominate" contract, irregular and elastic. These are some of the facts gathered from English

* The location of Mazagaon in the island of Mahim seems to be a mistake, and it is likely that the island of Bombaim was really meant. The latter was frequently designated the island of Mahim.

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books on the subject. The tenure is in constant use to this day in the West Indian island of St. Lucia (formerly French). Let us now see how this tenure, which was first introduced into the country by the Portuguese, affected the landholders in Bombay. "Emphyteutical grants or leases," says Westropp, C.J., in one of the footnotes which illuminate some of the more recondite passages in his judgment already referred to,

"are either perpetual or for a long term of years, on condition that the grantee or lessee of the lands should cultivate, plant or otherwise improve them, as the word emphyteusis signifies. Such grants are subject to conditions as to liability to quit or ground rent and other charges, and as to alienation, according to the diversity of the grants and according to the custom, or usage of the place where the lands are situate." *

One outstanding feature of the emphyteutic tenure would seem to be this, that the grantee held the land for the express purpose of improving it, just as Garcia da Orta held the island of Bombaim. Along with the communal tenure, it was much in vogue in Portugal, where land was divided into small estates and parcelled out among yeomen landlords, who, in many respects, resembled the English copyholders. Originally confined to barren lands, the tenure was extended in its application to fertile lands also, and even to houses and buildings. The emphyteutas, as the grantees were called, could let their property to sub-tenants on nearly the same terms as those on which they held it. It is worth noting that an estate held in perpetuity by virtue of this tenure was transmissible to the heirs † and assigns of the grantees.

"According to the Roman Law," says Sir Michael, "the emphyteuta, though not *dominus*, had nevertheless *jus in re*, and a true *possession* within the technical meaning of that term as used by the Roman lawyers. He was entitled to a real action, and at his death his estate or interest was transmitted to his heirs."

Maine, Palgrave, and other writers trace the fief of the Middle Ages to the emphyteusis of the Romans, such as the fields held by

* Bombay High Court Reports, iv. p. 85.

† Not, of course, the heirs of real property according to English rules.

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that tenure by the veterans of the Roman army on the frontiers of the Empire. According to Maine, the emphyteusis marks one stage in the current ideas which led ultimately to feudalism. This tenure, like that of aforamento, eventually, under the influence of feudal ideas, came to imply military service from the grantee. Hence it was that the whole population of the island of Bombay was, as in feudal Europe, bound together by the system of land tenure. Other European nations in India seem to have enforced a similar tenure, for Warden in his report observes: "The inhabitants of Madras and of all the other English, Dutch, French, and Danish Colonies in India were (we are informed) bound to furnish military service on emergencies; hence it appears that the lands all over India were held by a feudal tenure." * Whether, before the cession, estates besides the Manor of Mazagaon were held in emphyteusis, it is impossible now to say, but, as pointed out by Sir Michael Westropp, it is worthy of note that the quit-rent payable for a large part of the island (the whole of it, probably, which was in occupation or cultivation at the time of the cession) to the Portuguese Government, and which was afterwards commuted under Governor Aungier's Convention, bore the same name of *pensio* (*pensao*, pension) as that of the annual payment made by the emphyteuta to the *dominus emphyteuseos*.† But let us resume our examination of the Letters Patent granting the Manor of Mazagaon to Lionel de Souza in 1571. It was conferred upon him on the above-mentioned conditions, with remainder on his death to his wife, Donna Anna Pessoa, as chief tenant. She was, however, to pay a moiety of the rents and profits to her and Lionel de Souza's two sons, Ruy and Manoel de Souza, and to hold herself responsible for the payment of the quit-rent to the royal officers at Bassein. On her death the village was to remain in his (Lionel de Souza's) said sons, vested in the elder as head or chief tenant. Then followed a long and rather involved clause regarding a limitation

"in favour of the sons of the elder son and their issue, with a remainder over, on the exhaustion of his issue, to the other son and his issue, and on the failure of heirs descendants of those sons, to the heirs and suc-

* Government Selections, No. 64, N.S. para. 167.

† Bombay High Court Reports, iv. p. 86.

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cessors of the survivor, with remainder to such descendants of Lionel de Souza as he should by will nominate." *

The emphyteuta, or grantee, was permitted to reside at Chaul, but directed that he should repair to Bassein when the King's "service is to be done." Another important clause in the charter proceeded thus: "The which Village it shall not be in his power to sell, exchange, or to alienate without the King's leave, or that of his Viceroy," nor could it be divided, but should "go always in one sole person." In accordance with these provisions, Mazagaon seems to have remained intact for a long time, but parts of it were eventually sold, exchanged, or alienated after the cession of Bombay to the British Crown. These Letters Patent were duly registered at Goa and also at Bassein in 1572, and were produced before and recognised by the officers of the Crown of Portugal in the years 1580, 1583, 1589, 1590, and 1632. The Manor of Mazagaon, with its appurtenances, formed the principal private estate in the island, even at the time when the latter was ceded to the English in 1661, and paid the largest amount of rent or pension.† What parts of the island were regarded as its appurtenances it is difficult to say with any degree of certainty. Da Cunha observes that, in the first few decades of the eighteenth century, the Manor of Mazagaon was reduced to a mere skeleton of its former self, having been deprived of the village of Warli in 1726, of the Vezry Hill in 1749, of the Bardeen batty fields and the Puckerewall Gardens, as well as of the Char Garden.‡ Whether these may be regarded as its appurtenances it would be hazardous to speculate. In 1637 the manor seems to have changed hands, though it remained in the same family. The then occupant, Ruy, *alias* Luis de Souza, was found incapable of properly administering the village, owing to advanced age. So by the Letters Patent dated June 3, 1637, King Philip of Portugal

* It is in a high degree doubtful whether any such contingent or vested remainders could at any period of the Roman Law have been created in *emphyteusis*.

† In the return giving the revenue of the island submitted by Deputy-Governor Gary to Charles II. in 1667 the rent of Mazagaon is put down at 9,300 xeraphins, while Bombay, which stands second in the list, paid only 6,334 xeraphins.

‡ *The Origin of Bombay*, p. 224.

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confirmed to Bernardino de Tavora, only son of Ruy, an instrument of assignment and gift of the said village and its appurtenances, whereby he was to hold the same in emphyteusis for ever (*em fatiota para sempre*) subject to the quit-rent payable to the Crown of Portugal, "which said village," the Letters Patent continued,

"it shall not be lawful to sell, give, or exchange, or in any other way to alienate, without my leave or that of my Viceroy or Governor of India; nor yet shall it be in the least divided, but shall go entire in one only person, who shall himself cultivate, and take the uses and fruits it may produce, as his own property, in the same manner that Lionel de Souza and Ruy de Souza, his (Bernardino de Tavora's) grandfather and father had and possessed the same." *

The new patent was duly registered at Goa as well as Bassein in the year in which it was issued. The circumstance worth noting—one which Sir Michael Westropp seems to have omitted to notice—is the following significant note added to the copy of this patent: "Maneckji Navroji Hill, the Oart Charney, and Warli are part of this estate." But all these valuable estates were sold, one after another, till in the middle of the eighteenth century the fragment that remained of the once extensive manor was divided into six lots and farmed out to private individuals. The year 1731 seems to have proved particularly unfortunate in the history of the village of Mazagaon. For, among the unpublished papers in the appendix to Warden's report, there is a warrant of attorney, executed at Bassein on May 17, 1731, by Martinho de Silveira de Menezes (on behalf of himself and his son Joao Vicente), and also by his wife Donna Mariana de Noronha, to Wissia Senoy Tellung (Vishvanath Shenvi Telung), a Brahmin inhabitant of the town of Bassein, to sell the village of Mazagaon and its appurtenances for 21,500 xeraphins, and to execute the necessary conveyances. Later on in the same year, a deed of sale appears to have been executed and duly registered at the Government Secretariat, bearing the date August 3, 1731, by which the above-mentioned Wissia Senoy Tellung, with the consent of the Governor of Bombay, sold and conveyed the village of Mazagaon for 20,000 xeraphins to Antonio de Silva and Antonio de Limas, with all its appurten-

* Bombay High Court Reports, iv. p. 85.

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ances and services, new and ancient, with the two houses of lordship, one ruined and the other standing, and the administration perpetual and general of the church of Nossa Senhora de Gloria, situated in the said village, and of the patrimonial estate thereof, "to the end that they, by themselves and by their heirs and successors, attorneys, and executors, may possess, enjoy, and disfruit the said Village," &c., on condition, however, of their paying the annual pensions of the said church, &c., according to the will of Senhor Christovao de Souza, a former quit-rent tenant of the said village, and administrator of the said church. The title of Martinho de Silveira de Menezes was stated in the deed to be "by the nomination made of the said Village, &c., to him by the Donna Senhorinha de Souza, his grandmother, deceased, by reason of its appertaining to him as the eldest and most immediate descendant of Senhor Lionel, the first quit-rent tenant (Foreiro) and possessor of the said Village."* To follow the further course of the history of this manor would serve no useful purpose here. Suffice it to note that, like other big estates on the island, Mazagaon was eventually leased out, and when in 1779 the leaseholder claimed to be the proprietor and lord of the village, he was clearly given to understand that he had no claim to any such assumption and that the Government suffered him to receive only such benefits as he was entitled to by his lease.† In *Naoroji Beramji* v. *Rogers*, the learned judge (Westropp) observes that, with the exception of the patent of the Manor of Mazagaon, he has not succeeded in obtaining any information as to patents of dates prior to the cession of the island to Charles II. in 1661. But this fact does not preclude him from holding, in another important case,‡ that it was quite probable that other large estates in Bombay were gifted to private individuals on the same tenure and under similar conditions as those obtaining in the Letters Patent of Mazagaon.

"Though it is impossible now to say with certainty," says Sir Michael, "that many, or any, other lands in Bombay other than those of Mazagaon were held, before the cession to Charles II., in *emphyteusis*, the circumstance that the other lands would appear to have been held by Letters Patent, the feudal motives already suggested, the continual necessity for

* Bombay High Court Reports, iv. pp. 87–88.

† Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 446.

‡ *Lopes* v. *Lopes*, Bombay High Court Reports, v. p. 172.

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military organisation, and the undoubted fact that the quit-rent payable to the Portuguese Government for a large part of the island, probably the whole of it, which was in occupation or cultivation at the time of cession, bore the same ancient name of *pensio* (*pensao*, pension), render it far from improbable that the six other districts in the island, beside Mazagon, or several of them, were also held in *emphyteusis*, and were accordingly descendible according to the rule of primogeniture." *

Let us now come to the early British period, which dates from 1661, when, by the famous Marriage Treaty, the Crown of Portugal ceded to the King of England the port and island of Bombay in full sovereignty. We must again quote the eleventh article of this treaty, which runs as follows:

"The King of Portugal, with the assent and advice of his Council, gives, transfers, and by these presents grants and confirms unto the King of Great Britain, his heirs and successors for ever, the Port and Island of Bombay in the East Indies with all its rights, profits, territories, and appurtenances whatsoever thereunto belonging, and together with all income and revenue, as also the direct and absolute Dominion and Sovereignty of the said Port and Island of Bombay, and premises with all their royalties, freely, fully, entirely and absolutely."

In one of the foregoing chapters we have already dwelt, at some length, on the disputes to which this loosely-worded and contentious clause gave rise. The Portuguese contended that by this article the island of Bombay, and that alone, was ceded, without any of its dependencies or even appurtenances; the English, on the other hand, argued that both the islands of Salsette and Karanja were included in the treaty. While the two parties were hotly contesting their respective claims, and the monarchs of the two countries were leisurely writing polite letters to each other and to their representatives in India, the troops under Sir Abraham Shipman were dying by the hundred on the island of Anjediva. There was certainly not much substance in the contention of the Portuguese. Those who settled the various clauses of the Treaty of 1661, on behalf of Charles II., must have set a

* *Lopes* v. *Lopes*, Bombay High Court Reports, v. p. 179. Emphyteutic land at Rome was certainly not so descendible. And the limitations contained in the above-recited royal grant, even if valid, did not establish any such rule of descent.

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high value on the town and island of Bombay, for, as observed in a previous chapter, they included in it not only its dependencies and appurtenances, but even referred to the "towns and castles therein." True, the towns and castles existed only in their imagination, and their geography of Bombay, which, they said, was "within a very little distance from Brazil," provokes a smile. But all the same, they regarded the island as a valuable asset of the Crown. Moreover, the island of Salsette was actually traced out on the map which was submitted to the commissioners as part of the territory to be ceded when the Marriage Treaty was being drawn up.* Those who brought about the marriage between Charles II. and Katherine of Braganza would, no doubt, have objected to that part of the treaty which ceded Bombay to the royal bridegroom, if they had known that the island consisted mostly of waste and swampy lands and barren hills, and that a very large portion, if not the whole, of the cultivated property had been gifted to Portuguese or Indo-Portuguese inhabitants prior to the cession. "The growth of the island," says Douglas, speaking of Bombay at, or soon after, the cession,

"was cocoanut woods and other palms, miles in length, of which Mahim wood was the chief, interspersed with jack and mango trees; also, on the low grounds, rice or paddy fields. The rest of the island was swampy, covered occasionally by the sea in the lower portions, or barren and uncultivated on the higher ridges, such as Malabar, Worli, and Chinchpugli Hills."

The point worth noting is that most of these fields and tree-gardens—they were called oarts,† from the Latin word *hortus*, a garden—were in the possession of private persons, mostly cultivators who could not boast of superabundance of wealth or prosperity. If the wealth of a city is to be judged by the wealth of its inhabitants, then, at the time of the cession, Bombay must have been a very poor place indeed. Let us now turn our attention to certain events which considerably added to the difficulties of the English in ascertaining

* Douglas' *Bombay and Western India*, i. p. 87.

† A name still retained in Bombay, *e.g.*, the Nanabhai Beramji Oart, nearly opposite the Marine Lines Station.

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the rights of the Crown and of private individuals in the landed property on the island. The news of the Marriage Treaty between England and Portugal, and the consequent gifting away of the island to the English, created quite a scare among the Portuguese proprietors in Bombay. They were mostly ignorant people, but had intelligence enough to foresee trouble. Many of them held land by a tenure the terms of which were vague and not easily definable; many more held it by means not above suspicion. They dreaded the advent of the English, for they had a presentiment of the fate that was soon to overtake them. The landholders, therefore, hastened to strengthen their rights in the soil by fair means or foul. Luckily for them, they found an Englishman who was willing to help them, provided he was rewarded for his trouble. While the disputes over the terms of the Treaty were being settled, a sort of interregnum was proclaimed in Bombay, which lasted till 1666. On the death of Sir Abraham Shipman, Cooke, who had acted as his secretary, succeeded as head of the provisional Government of the island. In him the Portuguese proprietors found a ready instrument to further their own interests. Those who were doubtful about the tenure of their property had their doubts removed, and those who had no claims whatever to an estate had their claims established, on payment of substantial bribes to the head of Government.

"We have only to turn to Bruce's *Annals*," says Douglas, "a work to be depended on, to discover that a sheaf of fictitious title-deeds and forged documents, the manufacture of which was connived at by Cooke himself, and for which he had taken bribes, were made to do duty with wonderful alacrity, in the interests of this new proprietary who were now so anxious to foist their claims on the English."

The extent of corruption to which Humphrey Cooke, the first Governor of Bombay, had stooped may be gauged by the fact that when, in 1666, an inquiry was instituted into his conduct, it was found that, instead of carrying the revenues to his Majesty's account, he had extorted the sum of 12,000 xeraphins from the inhabitants and converted it to his own private use.

We shall now examine the terms of the Convention into

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which Cooke entered with the Portuguese in 1665. It marks an important stage in the history of land-tenures in Bombay. It is said that Cooke was obliged to enter into this "Treaty of Surrender," as it is appropriately called, "to preserve his own life and the lives of the remaining troops." Most of the latter had died through want of provisions, unhealthy climate, or, as Fryer bluntly put it, their own intemperance. Disputes were still raging between the English and the Portuguese, and the probability of an amicable settlement was remote. Neither party budged an inch: each insisted on construing the terms of the Treaty as best suited its own interests. The Portuguese could well afford to hold out indefinitely; they had been in the country for more than a century, and were inured to its climate. Not so the English. Their position had become almost untenable, and certainly insecure. Antonio de Mello e Castro, the Viceroy of Goa, was astute enough to see that circumstances were propitious for him to dictate terms to the English, and he was not far mistaken. Cooke had probably got tired of waiting. He must also have been unnerved by the sad fate that had befallen Sir Abraham Shipman and the troops under his command. He, therefore, readily agreed to the terms of the Convention, the essence of which was that the English consented, under certain conditions, to accept only the town and harbour of Bombay, substantially renouncing all claim to the neighbouring islands, *e.g.*, Salsette and Karanja. The new Treaty, consisting of fourteen articles, was executed on January 14, 1665, at the *casas grandes da Senhora da Ilha*, *i.e.*, the large house then occupied by the lady of the island, Donna Ignez de Miranda, which, years before, was in the possession of the famous Garcia da Orta. It is not necessary to examine all the articles of this Capitulation; it will suffice for our purpose to note only a few of those which have some bearing on the subject treated of in this chapter. We reproduce below five of them, as they are found in Appendix B to the second volume of Forrest's *Selections*. They run as follows:

"6th. That all the inhabitants residing at Bombay, as well as those who may have estates in the said Island, when they should not like to reside in the said Island, it shall be free to them to farm out their

estates, or sell the same on the best terms they may be able to obtain; and if the English gentlemen should require them, it shall be for their just and equal value and not on any other terms, but if the English gentlemen should not chuse to buy them, nor the holders live in them, it shall be free to them to alienate the same, and until they do so, it shall likewise be free to them to enjoy and make use of the same as they have hitherto done without the least contradiction on the part of the English gentlemen.

"7th. That the inhabitants of the said Islands of Salsette, Caranjah and Baragao and of other places of our jurisdiction, shall freely fish in the said Bay and River and in the arm of the sea which enters and divides Bombay from Salsette by Bandora till the Bay; and the English gentlemen shall not at any time prevent them nor will they at any time and under any pretence whatever demand any tribute on this account, and the inhabitants of Bombay shall be allowed to do the same with the same liberty and freedom.

"10th. That although the Manor right of the Lady, the Proprietrix of Bombay, is taken away from her estates if she lives in the Island, they are not to be entermiddled with or taken away from her unless it be of her free will, she being a woman of quality they are necessary for her maintenance, but after death, and her heirs succeed to those estates, the English gentlemen may if they chuse take them, paying for the same their just value, as is provided in the case of other Proprietors of Estates, and should the English gentlemen now wish to take her houses to build Forts thereupon, they shall immediately pay her their just value.

"11th. That every person possessing Revenue at Bombay, either by Patrimonial or Crown Lands, they shall not be deprived thereof except in cases which the Laws of Portugal direct, and their sons and descendants shall succeed to them with the same right and clause above mentioned, and those who may sell the said Patrimonial or Crown Estates shall transfer to the purchaser the same right and perpetuity they had, that the purchaser may enjoy the same and their successors in the like manner.

"13th. That the inhabitants of Bombay and the landholders of that Island shall not be obliged to pay more than the *foros* they used to pay to His Majesty, this condition being expressly mentioned in the capitulations." *

Before proceeding, it will be useful to define the Portuguese term, *foros*, which occurs in the last article. Put shortly, *foro* means a quit-rent payable by tenants-in-chief to the lord of the manor, and it is from this word that the Portuguese tenure of *aforamento* derives its origin. Mr. Thriepland, who was Advocate-General of Bombay in the beginning of the last century, while arguing an important case regarding the owner-

* Forrest's *Selections*, ii. pp. 378–379.

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ship of a certain plot of foras land in 1805, observed that the term "foras" conveyed to every native who heard the word pronounced a fixed and determinate idea of the nature of the terms by which the lands were held.

"It is called foras," he added, "a Portuguese expression, the meaning of which is rent, but which in this island denotes the rent in particular which is paid by a cultivator or person permitted to occupy ground for the purpose of improving it, but without any lease or other grant by which he can maintain possession during the continuation of a term." *

But if lawyers and others are agreed upon the meaning of the word "foras," there is not the same unanimity of opinion among them regarding its origin. According to Sir Michael Westropp, "foras" is derived from the Portuguese word "fora" (Latin *foras*, from *foris*, beyond), signifying outside. Etymologically, therefore, he defined the word as meaning the rent or revenue derived from outlying lands.

"The whole island of Bombay," the learned judge observes, "fell under that denomination when under Portuguese Rule, being then a mere outlying dependency of Bassein. Subsequently, the term *foras* was, for the most part, though perhaps not quite exclusively, limited to the new salt batty ground reclaimed from the sea, or other waste ground lying outside the Fort, Native Town, and other the more ancient settled and cultivated grounds in the island, or to the quit-rent arising from that new salt batty ground and outlying ground." †

Sir Michael adds that the quit-rent in Governor Aungier's Convention, called foras, also bore the still older name of *pensio* (*pensao*, pension), and since the date of that Convention has been chiefly known by the name of *pension*, but that it was payable in respect of the ancient settled and cultivated ground only. Warden, however, does not seem to concur in this view. He thinks that the term "pension" has from the first been entirely misunderstood, if it has been considered in the light of a tax. "The tenor of the article of Aungier's Convention," he explains, "proves that it was not the quit-rent. The Portuguese word *pencao* means, when applied to estates, a payment for the

* *Government Selections*, iii. N.S. para. 17. Cf. the *metayer* tenancy of sugarcane land, common in Tobago.

† Bombay High Court Reports, iv. p. 40, note.

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enjoyment of land—the bonus or the premium paid for the fee-simple on the compromise of a doubtful tenure." This definition fits in with the object with which Aungier entered into the Convention with the *povo* of Bombay; but it seems to be a matter for surprise that these two terms, pension and quit-rent, were not more distinctly specified therein. It will be interesting to see how another eminent and earlier judge in Bombay defines this ancient term. Says Sir Erskine Perry, with the lucidity of expression for which his judgments are deservedly admired:

"In the capitulation made to Ensign Cook there is a provision in respect of the accustomed *Foras*, which, perhaps, is equivalent to the celebrated Spanish word *Fueros* we hear so much of in modern times, or it may mean the rent reserved for outlying grounds, for lands lying fora (outside) the demesne lands. Then there is the fixed sum called pension or pensao of the Portuguese, corresponding, I suppose, with the word pensio which denoted, in middle ages, a settled sum paid for land, for I find it used by *Bracton* in respect of the King's tenants in ancient demesne, who, he says, *a gleba amoveri non possunt quamdiu solvero possunt debitas pensiones.*" *

Da Cunha, however, enters a short but emphatic caveat, and affirms that *foro* has no connection whatever with *fora*, nor can the latter be derived from any Latin word. He rather derives it, if it is at all to be traced to a Latin origin, from *forum*, a public place, where public affairs, like the payment of rents or tributes,† were transacted. If the learned doctor had given no other reason than this for his definition of the word, we might have hesitated to accept it in preference to the one put forward by the erudite Chief Justice. But in support of his contention he points out a very significant fact which seems to have escaped Sir Michael Westropp's notice. Da Cunha observes:

* Perry's Oriental Cases, p. 487.

† Da Cunha seems more than justified in deriving the word "foro" from the Latin *forum*, which originally meant a public place, and then a legislative place, and finally the lord's court, where the lord of the manor held his feudal court and collected his feudal rents. In Low Latin forum came to mean not only the public or market place, but also the price of things sold there. In the Spanish Dictionary, by Newman and Barrete, the following meanings are attributed to the word "foro": (1) Court of Justice or the hall where tribunals hold their sittings. (2) Bar. (3) Lordship, the right of a superior lord, of whom lands or tenements are held. And Vieyra, in his Portuguese Dictionary, defines "foro" as meaning Court or Hall of Justice, and "forum" as an acknowledgment or quit-rent payable to the lord of the manor.

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"And in order to justify this far-fetched derivation of the word foro from fora, he (Westropp, C.J.) confined the quit-rent to the outlying ground, and to the island of Bombay, as a mere outlying dependency of Bassein. But the fact generally known that the foro was imposed both on the inlying as well as on the outlying ground, and that it was not limited to Bombay, but was indifferently applied to Bassein, to Salsette, and to all other parts of that province, ought to have convinced him of the feebleness of his hypothesis."*

If the fact stated above be correct—and there seems no reason to doubt its correctness—it upsets Sir Michael's theory regarding the derivation of this term. For, deriving it from the Portuguese term *fora*, meaning outside, the learned Judge concluded that foras indicated the rent or revenue derived from outlying lands only. But according to Da Cunha, foras referred to *inlying* lands also. Hence the theory put forward by the latter appears more convincing than that advanced by Sir Michael. And as it involves no point of legal nicety, the scholar's view may be preferred to the Judge's in this instance.†

To return to the abortive Convention of 1665. It will have been seen that the Portuguese had safeguarded their own interests even to the detriment of those of the English. But they soon discovered that the Treaty was not worth the paper it was written upon. Humphrey Cooke must have chuckled while affixing his signature to it, with all the solemnity befitting the occasion, for he certainly could not have intended to observe all its terms. As soon as he found himself in possession of Bombay, and safely harboured in the castle, he quietly repudiated most of the terms agreed upon. The Portuguese Viceroy protested against this breach of faith, but he protested in vain. As noted in another chapter, the Convention was never ratified either by the Crown of England or that of Portugal. On the contrary, King Charles II. repudiated it in terms which admitted of no doubt. In a letter dated March 10, 1676, more than a decade after the bogus Treaty was signed, the King referred to the "very unjust Capitulation" Humphrey Cooke was forced to submit to, which neither he was empowered to come to, nor

* *The Origin of Bombay*, p. 229.

† The roads from the Fort crossing the "Flats" or Foras Lands, between Malabar Hill and Parel, were generally known as the "Foras Roads"; but this general title seems to have been superseded by other names, though this ancient term is still preserved in a road called the "Foras Road.'

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anyone else to impose upon him. "We, therefore, are determined to protest," added his Majesty, "against the said capitulation, as prejudicial to our Royal dignity and derogatory to our right, which we hold in the higher estimation for coming to us, in part of her dowry, with our aforesaid dearest Consort." And when in 1699–1700 an attempt was made by the Portuguese to induce the Government of Bombay to recognise the Treaty, it failed completely. And again, in 1723, when a memorial was sent home by the Portuguese authorities in India, complaining of certain outrages committed by the English on the inhabitants of Portugal at Bombay, in contravention of the Treaty entered into by Cooke, the Court of Directors repudiated the Convention in clear terms. They replied, in effect, that the Treaty was unauthorised, both with respect to England and Portugal, as it was never ratified by them or either of them, and that therefore it necessarily followed that all that was built upon it fell to the ground.

"In respect to the validity or invalidity of the articles in question," writes Warden, presumably summarising the above reply, "and whether King Charles owned or disowned them, the Directors replied, in the first place, that it plainly appears from the instructions given to Sir Abraham Shipman that the King of England had given no power to sign any such articles, but the orders import quite the contrary; and the Portuguese memorial, which mentions the names of the Commissioners that made the agreement with Cooke, says not one word of their being named or authorised by the Crown of Portugal as such, which certainly would not have been omitted had there been any prospect in Europe of the necessity or intention of such a preliminary agreement; whereas, on the contrary, the Viceroy was singly and purposely sent to deliver the premises pursuant to the articles of marriage between the two Crowns, so that the pretended articles were not only imposed upon Cooke contrary to the directions of the King of Portugal himself, which was to deliver up Bombay upon the treaty of marriage without any further conditions, but are also inconsistent with the right of the King of England, as is manifest from the articles themselves, but more particularly so from the 11th article thereof, by which it is provided that those who are possessed of the inheritance of lands in Bombay should not be deprived of them, but for crimes only which the law of Portugal does order, which condition is to be perpetually annexed to the land notwithstanding any alienation; so that if an owner of land in Bombay commits any crime against the laws of England, even high treason against his most sacred Majesty, he is not to forfeit his land there, because the law of Portugal does not so order it. This instance alone shows the absurdity of those articles, and that they

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could not be terms agreed upon by the Kings of England and Portugal, but were a gross imposition contrived by a faction of the Portuguese in the Indies against the command even of their own prince." *

We shall, therefore, be justified in ignoring altogether the Treaty of 1665, while tracing the subsequent history of landed property in Bombay. Cooke's subterfuge must have helped him to tide over the difficulties which beset him at the time; but it certainly did not remove the confusion regarding the ownership of land in and around the Fort. On the contrary, what, according to Douglas, was plain sailing in 1662, had become in 1666 a dangerous area beset with hidden shoals. In that year Sir Gervase Lucas was sent out by the King to succeed Cooke, who had been dismissed, in the Government of Bombay. Sir Gervase transmitted an account to the authorities in England, bearing on the importance and value of the island and its exposed situation, but particularly emphasising the improvident Convention his predecessor had entered into with the Viceroy of Goa, whereby he had agreed to receive the island without the King's rights being ascertained, or even a statement given of the extent of them as transferred to the Crown of England. In his letter to Lord Arlington, dated March 21, 1666–67, Sir Gervase, amongst other things, stated that he was making every effort to increase the King's revenues, but from the indefinite conditions on which Cooke had received it, it was impracticable to ascertain which of the inhabitants were legally possessed of sufficient titles to their estates, no stipulation having been made relative to the King's sovereignty of the soil, as some of the best estates in the island refused to pay rent, and produced titles which could not be disputed, though believed to be fictitious. He also added that the island, when properly cultivated, and the rights ascertained, would be very productive. † It took years—generations, we may say—to ascertain the King's rights in the soil, and to decide which of the inhabitants held estates by virtue of valid claims and which by means of fictitious title-deeds. A guide of extraordinary skill and ability was needed to steer clear of the pitfalls which infested the road to success in Bombay at this time. Luckily, there was such a man in the service of the Company, and he was no other than Gerald Aungier.

* Warden's Report, para. 189. † *Ibid.* para. 12.

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CHAPTER XI

AUNGIER'S CONVENTION AND AFTER

IN 1668 the Crown, considering the island of Bombay an unprofitable and troublesome possession, transferred it to the East India Company, "in free and common socage as of the Manor of East Greenwich, on payment of the annual rent of £10 in gold." The two important clauses of the charter confirming this transfer, which had some bearing on the subject under examination here, provided that the inhabitants

"and other our subjects in the said Port and Island, shall and may peaceably and quietly have, hold, possess and enjoy all their several and respective properties, privileges, and advantages whatsoever which they lawfully had or enjoyed, at the time of the surrender of the said Port and Island to us as aforesaid or at any time since, anything in these presents contained to the contrary notwithstanding,"

and that the Company or their assigns should not at any time "sell, alien, transfer, or otherwise dispose of the said Island and premises, or any part or parts thereof, to any Prince, Potentate, or State, or other person or persons whatsoever, but such as are or shall be the subjects and of the allegiance" of the Crown of England. The first of the above provisos makes it clear, as is pointed out by Sir Michael Westropp, that no higher or other rights were conferred on the inhabitants of Bombay than those they were entitled to under the Marriage Treaty of 1661. The Crown ceded to the East India Company the whole of the port and island of Bombay, including its appurtenances and dependencies, and not only that portion of the territory which Cooke was forced to accept in 1665. But what constituted the boundaries of the city, and which of the islands and districts

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were to be regarded as its dependencies and appurtenances, the agents of the Company did not profess to know. Much less did they know what, of right, belonged to the Crown, and what to the Portuguese estate-holders.* Disputes regarding land arose almost from the day Sir George Oxenden, the first Governor under the Company's rule, landed in Bombay; but there were other important matters pressing for settlement. While sending a commission to Sir George to receive charge of the island, the Court of Directors transmitted to him an estimate of the revenue, amounting to £2,833 per annum, with directions to engage any of the King's troops who might be disposed to enter into the Company's service. It was further directed that, as an encouragement, these soldiers were to be allowed half-pay on condition of their becoming settlers on the island and affording their labour for the cultivation of it.† These directions testify to the anxiety of the authorities in England to populate the then sparsely-inhabited island of Bombay, and to cultivate lands which were mostly barren or covered by the sea. According to the reliable testimony of Dr. Fryer, the total population at this time was estimated at about 10,000 souls, largely composed of "fugitives and vagabonds"—or, as another writer characterises them, of "outcastes." There was also a sprinkling of Bhandaris, Curumbees (Kunbis), and Kolis, mostly tillers of the soil. The industrial element, however, was almost insignificant, and the Directors at home and the agents of the Company in India made strenuous efforts to introduce more of it into the island. In these well-meant attempts their zeal probably exceeded their discretion, for large tracts of most valuable property must have been allotted to immigrants who volunteered to settle down on the island, on very loose conditions and under restrictions far from burden-

* As regards the extent and tenure of the land the ownership of which vested in the East India Company by virtue of this transfer, Sir Erskine Perry makes the following observations in a case he decided in 1848: "In the island of Bombay, however, whatever may be the case elsewhere, there appears to be no doubt that all the soil of the island, which was not in private hands at the time of the cession, vested in the East India Company. The island belonged to a European Power, with whom the feudal laws as to landed property prevailed, and the Company also hold the island by feudal tenure from the Crown" (*Hough* v. *Leckie and others*, Perry's Oriental Cases, p. 496).

† Warden's Report, para. 15.

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some. It is not unlikely that these benevolent but hastily-considered attempts to improve the cultivation and increase the population of Bombay contributed to the muddle towards which the question of landed estate soon drifted. Not only were soldiers encouraged to become settlers, but Oxenden was instructed to invite natives from other parts of India as well. While effect was being given to these directions, disputes between the Portuguese and the English regarding land came to a head. The Jesuit College at Bandora, for instance, claimed a considerable extent of land to which they were not entitled. The Governor of Bombay refused to admit their claim and formally rejected it. Thereupon the Jesuits had recourse to force—a step they must have sincerely regretted soon after. For the astute Governor held that their action was an act of treason against his Majesty, and declared their lands and rights forfeited to the King. The Jesuits protested most vehemently, and even appealed to the Directors; but the latter replied that their claims, though admissible by Portuguese usages, were not to be considered as valid in an English settlement. It will be interesting to know, at this stage, the approximate value of the territory that was ceded to the East India Company. A detailed estimate of the revenues of the island was sent to the Secretary of State by Deputy-Governor Gary a year after the cession, which contained the following table:

Rupees.				Xeraphins.		
6,438	2	13	Rent of Mazagaon...	9,300	0	40
3,321	1	69	„ Mahim	4,797	2	45
1,645	3	54	„ Parell	2,377	1	56
1,203	1	20	„ Vadella	1,738	0	40
547	0	40	„ Sion	790	0	60
395	1	48	„ Veroly	571	1	34
4,932	1	80	„ Bombaim...	6,344	2	61
6,611	2	16	„ Tobacco Stauk or Frame ...	9,555	0	00
1,661	2	16	„ Taverns	2,400	0	00
12,261	2	16	The accounts of Customs	18,000	0	00
12,261	2	16	The accounts of Cocoanuts	18,000	0	00
50,740	0	88		78,870	1	18
801	3	58	More may be advanced	1,129	1	62
51,542	0	46	Total...	75,000	0	0

Which at 13 xeraphins for 22s. 6d. sterling amounts to £6,490 17s. 6d.

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The total revenues of the town and island of Bombay, therefore, amounted to less than £6,500 in 1669, an amount which was not large enough to defray the bare cost of administration. Regulations were in consequence published by the Company, directing, among other things, that a town should be built on a regular plan, that inhabitants, chiefly English, should be encouraged to settle in it and be exempted for five years from the payment of customs, that revenues be improved, without, however, the imposition of any burdensome taxes, and that the manufactures of all sorts of cottons and silks be encouraged and looms be provided for the settlers. In 1699–1700 the Directors issued certain instructions on the subject of the claims of the Portuguese to lands in Bombay, in order to ascertain whether the lands belonged to the Crown of Portugal or to individuals at the date of the cession, declaring at the same time that all acquisitions posterior to that date must be held to be based on an imperfect title. An inquiry such as the one proposed must necessarily have involved a considerable amount of time and labour. But it was thought imprudent to delay the strengthening of the harbour or the building of the town, which had already been sanctioned. To facilitate the action of the local Government the Directors authorised them to purchase certain lands in the immediate vicinity of the Fort, provided the whole expense did not exceed £1,500.* They were also directed to allow "a moderate toleration" to those inhabitants whose lands were utilised for the purpose, but this indulgence was not to be extended to the Jesuits. What the authorities exactly meant by "a moderate toleration" it is difficult to say. In pursuance of these instructions some lands in the immediate vicinity of the Fort were purchased by Government, but it is doubtful if a fair price was paid for them. The temper of the Portuguese estate-holders was not of the sweetest at this time. The Jesuits were

* It is worth noting that the name "the Fort" was at that time applied only to the castle and the ground within its walls and bastions, and that after 1718, when the town was surrounded by a wall, it was used to denote the more extended enclosure. Another point of interest in this connection is that at the time of the cession the English got possession of the castle and its environs only, and not of the many acres of land which lay around it, and which ought to have belonged to them by right. This outer cincture was purchased bit by bit, and Douglas says that from 1760 to 1812 the English expended Rs.7,37,927 in such purchases.

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the avowed enemies of the English, and the reception and encouragement they gave to Cooke in his designs on the Government of Bombay proved their bitter hostility. Under these circumstances it was impolitic of the Directors to have ordered the purchase of lands on "a moderate toleration" from certain inhabitants only and not to have extended that doubtful indulgence to the Jesuits. It must have given rise to much discontent, and appreciably added to the difficulties under which the authorities laboured. The crisis was probably precipitated thereby, and the consequences would have been very serious but for the tact and foresight of Gerald Aungier.

Almost the first measure Aungier introduced in Bombay on assuming charge of the Government was the establishment of a Court of Judicature. He then revised certain regulations regarding articles subject to customs, and levied a port duty of 1 per cent. A survey of the island was next prepared under his direction, when it was found that the amount of the revenues derived from the lands had been over-rated, owing to the large proportion of them being claimed and retained by the Jesuits.

"With regard to the projected town," writes Warden, "the expenses incurred in erecting the Fort had rendered it a subject for future consideration; and as the claims for rights to lands near the town had been numerous, he (Aungier) had removed the fishermen to some distance, and intended to build houses on the ground where their huts stood, but it would require time to adjust the foundations of the rights to lands before houses for the settlers and merchants would be erected."*

The services of a Mr. Herman Blake were next requisitioned, and he was appointed Engineer and Surveyor-General of Bombay in 1670. His labours were chiefly directed towards ascertaining the rights of Portuguese estate-holders to the property in dispute, but the survey prepared by him is not forthcoming. Three years after, the Governor himself prepared what may be called a statistical account of the island, specifying the division of it into the districts of Bombay and Mahim, with an account of its inhabitants, European and native, the extent and magnitude of the fortifications, the strength of the

* Warden's Report, para. 23.

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garrison, and the practicability of rendering Bombay a seat of trade equal to Surat without interfering with the purchases or sales at that Presidency.* As more fully described in Chapter IV., Aungier introduced several wholesome measures in Bombay, and gave every possible encouragement to outsiders to settle on the island. His reputation for sagacity and forbearance, and the religious toleration he invariably showed to all, without distinction of class or creed, had spread far and wide in the Western Presidency, and people were flocking in to enjoy the benefits of a wise and tolerant administration. But this sudden influx of population again brought the land question to the fore. Disputes between the Government and the inhabitants grew more bitter every day. Aungier recognised the necessity of determining this question once for all. It had drifted for years, and the difficulty of solution had increased a good deal. He set himself to the task the magnitude of which had deterred others from undertaking it, and solved the problem in a manner which reflects the highest credit on his statesmanship, and has earned him a name and fame which will always cast a lustre on the early history of this Imperial city so long as it is told.

Before speaking of Aungier's Convention and the terms agreed upon between the Government and the inhabitants, it will be useful to ascertain the approximate area of the town and island of Bombay and of its appurtenances. Otherwise, we shall find it difficult to understand why a shrewd man like Gerald Aungier bartered away property, now worth crores of rupees, for an annual quit-rent of a few thousand xeraphins. The most reliable authority on this point is Dr. Fryer, who commenced his tour in the East Indies in 1672 and finished it in 1681. He was in Bombay when Aungier was its Governor. We need make no apology for quoting at some length from the learned doctor's *Travels in the East Indies and Persia.* Describing the island of Bombay and the neighbouring districts, Fryer says:

* Commenting on this, Warden observes: "This speculation affords only the result that, however comprehensive the views of President Aungier might be, taking the whole of the preceding details into consideration, the prospect of an enlarged commerce from Bombay was precarious, if not doubtful." But even Warden could not say that Aungier proved a false prophet.

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"It is a full mile in length; the houses are low and thatched with the oleas of the cocoa-trees; all but a few [the] Portuguese left, and some few the Company have built. . . . There is also a reasonable handsome bazar at the end of the town. . . . On the back side of the towns of Bombaim and Mahim are woods of cocoas, under which inhabit the bandaries (those that prune and cultivate them), these *hortoes* being the greater purchase and estates in the island for some miles together, till the sea breaks in between them, over against which, up the bay a mile, lies Masoegoung [Mazagaon], a great fishing town, peculiarly noted for a fish called *bumbalo*, the sustenance of the poorer sort who live on them and batty, &c.; the ground between this and the great breach is well ploughed and bears good batty. . . . Beyond it is Parell . . . to which appertains Seain [Sion], manured by Columbeens [husbandmen], where live the Trasses or porters also, &c., &c. Under these uplands the washes of the sea produce a lunary tribute of salt left in pans or pits made on purpose at spring-tides for the over-flowing, and when they are full are incrustated by the heat of the sun. In the middle between Parell, Mahim, Sion, and Bombaim, is a hollow wherein is received a breach, running at three several places, which drowns 40,000 acres of good land, yielding nothing else but samphire; athwart which from Parell to Mahim, are the ruins of a stone causeway made by Pennanes. . . . At Salvesong the Franciscans enjoy another church and convent; this side is all covered with trees of cocoas, jawkes and mangoes; in the middle lies Verulee [Worlee], where the English have a watch. On the other side of the great inlet to the sea is a great point abutting against Old Woman's Island, and is called Malabar Hill, a rocky, woody mountain, yet sends forth long grass. . . . Thus have we completed our rounds, being in circumference twenty miles, the length eight, taking in Old Woman's Island, which is a little, low, barren island, of no other profit but to keep the Company's antelopes and other beasts of delight."

Long as is this extract, it will have an important bearing on the subject when read in connection with Governor Aungier's Convention.

The disputes regarding lands lying in and around the Fort had, as we have already noticed, given rise to much bitter feeling between the English and the Portuguese. Government were accused of high-handedness in depriving some of the estate-holders even of their just rights, and the latter were, in their turn, charged with forgery and getting up false title-deeds. The authorities were anxious to increase the revenues of the island somehow, and in their excessive zeal they had confiscated lands even of some of those who were *bonâ-fide* holders or purchasers—a proceeding naturally resented by the

latter. The Court of Directors thereupon instructed the President to inquire into the titles of those who held lands, and to ascertain their rights in the property. But the landholders protested against this inquiry on the plea of their being too poor to defray the cost which the proposed scrutiny into their titles would entail. Finding that their orders had given rise to much discontent, the Directors again wrote to Aungier, who was then at Surat, to abandon the inquiry. But at the same time they maintained their sovereign rights over all foras or outlying lands, and suggested that, in conjunction with the landholders, a lump sum might be fixed as their rent payment, leaving to the seniors of the landholders to allot to each individual holder his proper share.* When Aungier came to Bombay in 1672 he gave effect to these instructions, and in accordance therewith appointed a general assembly of the chief representatives of the inhabitants of Bombay, "having just regard to the quiet, content, and satisfaction of the good people in general and to the establishment of this Government on the firmest basis of an everlasting and universal peace and tranquillity." This assembly seems to have met at the castle on October 1, 1672, to consider the terms of an agreement. The Governor and Council having freely given their assent to the people's own desire for the further consideration of the compact, the representatives reassembled on the 4th of October following, when they presented to Aungier a document containing twelve articles which they had agreed upon at that meeting. It opened with a short preamble as follows: "The substance of the composition between the Honourable East India Company and inhabitants of this isle, Bombay and Mahim, subjects of the said Company, and others having lands of inheritance on this isle or living in other places." We reproduce below the twelve articles *seriatim:*

"1. That for the better way of agreeing in the express charges that the Company have for the defence of this isle, the inhabitants and others aforesaid do offer to the Honourable Company 20,000 Xeraphins

* These instructions included a survey of the island, but on the ground of expense this part of the instructions seems not to have been carried out.

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(Rs.13,850) yearly, including in this sum the quit-rents that they did pay formerly and desire these conditions, namely:

"2. That by virtue of this contract all law-suits and controversies shall cease between the Honourable Company and the said subjects interested in this isle, concerning the possession they had formerly in their estates thereon when His Sacred Majesty of Great Britain took possession of it.

"3. That by the said composition the Honourable Company shall of new confirm the estates of the said inhabitants, notwithstanding any suspicion that the present possessors may have fallen into until this present time.

"4. That if the Honourable Company do grant to any person not to pay what may come to their shares, then the said sum shall be deducted out of the 20,000 Xeraphins, and this in respect of this composition is made upon all estates and lands of inheritance of those interested on the isle.

"5. That the estates that are seized on shall be delivered again to the old possessors of what conditions soever.

"6. That in respect the restoring the several estates the Honourable Company would be pleased to excuse the measuring the same that the people may not be also at great charge considering their extreme poverty.

"7. That for the time to come if any estates on the isle come to the Honourable Company by any title whatsoever, or likewise by cutting any tree, or seizing any oarts or batty grounds for the use of building the city or other ground for the defence of it or any other fortification, that the quantity that amounts to the said estate with the quit-rents shall be deducted according to the value of the palmieras or the ground.

"8. That the possessors may dung the trees and ground with *babaxim* and *cuta* as they ever did do,* without paying anything for the same as a duty by way of excise or custom, but what was formerly paid.

"9. That in case of any storm or other damage (which God forbid) the

* *Babaxim*, generally written *bobsay*, is a kind of small fish: *kut* or *cuta* is fish manure, very largely used in Bombay and elsewhere. The unhealthiness of the climate of Bombay was partly attributed to the exhalations from the putrid fish or *kut* with which the lands were manured, so that the practice was repeatedly prohibited, and as often, on the petition of "corrumbees," again permitted. For instance, in 1733 a report was made to Government that the Cunbis, who cultivated the rice-grounds, had fled to Salsette, because they were restricted from using fish-manure. In 1739 the principal landholders of Bombay and Mahim set forth in a petition "the inevitable ruin of themselves and families by the entire prohibition from the Government of the *Koot* manure," and prayed for consideration and relief from their grievance. And again, in 1742, the Fazendars or freeholders offered Rs.10,000 to Government, on condition that the prohibition against *kut* should be removed. Their petition was referred to the Court of Directors, who rejected it. It is interesting to note that *kut* manure is largely used even at the present day in and around Bombay, particularly in fishing towns, such as Bandora, Versova, and others.

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Honourable Company shall deduct out of the 20,000 Xeraphins according to the loss of their estates which shall be done by honest persons from the said inhabitants.

"10. That for the more expedient raising the sum as likewise the valuing the estates, and for the giving satisfaction to the Honourable Company at the time to come, the inhabitants shall appoint the persons to whom the Company shall give power for raising the said sum, which shall be done for the quietness of the inhabitants and the interest of the Honourable Company, as it will be only at the Company's charge to allow two guards at both places, Bombay and Mahim.

"11. That the said 20,000 Xeraphins shall begin to be paid on the 9th February, 1673, in three payments every year, and the Honourable Company shall not demand payment before that time.

"12. That one of the principal things in this composition is the quietness and security of the inhabitants, who desire his Honour with the Gentlemen of his Council and other Ministers of the Honourable Company to accept and establish this contract with the conditions herein mentioned, and that it be confirmed by His Sacred Majesty of Great Britain and the Honourable Company with all that is necessary to be done without any invocation [innovation?]. All which the inhabitants desire to be done with all possible speed."*

Such were the proposals made by the chief representatives of the inhabitants of Bombay; but as the Government does not seem to have been represented at that assembly, and as the articles of agreement referred to matters of the gravest importance, deserving of mature consideration and debate, the Governor deemed it necessary to convene another general assembly,

"whereunto all the people in general interested in this affair were invited to appear, that the debates and controversies on both sides, being publicly and fairly stated and all scruples amicably and justly controversed, a happy issue and accommodation might be confirmed, to the security as well of the Honourable Company as of their subjects and inhabitants in general."

This assembly was also held at Bombay Castle, on November 1, 1672,† at which there were present the Honourable

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. pp. 259–260.

† Warden says this assembly was convened on November 1, 1674, but he is clearly in error. Campbell, Da Cunha, and Westropp all state that it was held in 1672. It is probable that Warden was misled by the fact that another General Assembly was summoned by Aungier two years later when the Convention was ratified.

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Gerald Aungier, Governor and President, Mr. Henry Chowne, Mr. John Child, Mr. George Wilcox, Mr. James Adams, Attorney-General for the Company, Mr. Stephen Ustick, all members of Council, and the Secretary, Mr. Samuel Walker, while the *povo*, or people, of Bombay were represented by many eminent men, mostly Portuguese, including an Attorney-General, a Procurator, and, perhaps the most distinguished of them all, the Lord of the Manor of Mazagaon. At this meeting the twelve articles were publicly read and their contents debated upon, all doubts and scruples on both sides having been first set at rest. As a result of their deliberations, the famous Convention was signed. The preamble to it is as follows :

"Whereas since this isle of Bombay was surrendered to the possession of His Sacred Majesty of Great Britain, some occasion of great discontent did succeed through the want of a due understanding what did belong of right to the Crown and what did belong to the people, which gave the original cause of seizing of lands and estates of several people to the general disquiet of His Majesty's subjects. And whereas since His Sacred Majesty did by his Royal Grant bestow the isle of Bombay to the Honourable East India Company, orders were issued out by the Governor and Council of this isle, in obedience to His Majesty's and the Honourable Company's commands, for restoring the said lands to the persons who were aggrieved, provided that upon examination of their titles they could show just right thereunto. It so happened that in the examination and decision of the said titles, many doubts and important causes did arise which might have given great cause of disquiet to the present possessors of houses and estates in the isle that the titles in right of which they held their lands had become exposed to censure. The people, therefore, thought fit of their own free motion, by mutual assent in a public declaration and manifesto, to propose to the Governor and his Council that they would pay a yearly contribution, or composition, of twenty thousand Xeraphins to the Honourable Company, including the present quit-rent of foras, provided that the present possessors of their respective lands and estates may be confirmed and established in their possessions and thereby be secured from all doubts and scruples that may arise thereafter. Also that the lands formerly seized may be restored to the pretenders thereunto." *

Such were the suggestions made by the *povo* for their own content and satisfaction, in which the interests of Government were, more or less, subordinated to theirs. But Aungier, though anxious to come to an understanding with them, was equally

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 258.

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solicitous of the interests of his masters, the East India Company. Before signing the composition, therefore, he made certain conditions which the *povo* of Bombay readily accepted. The terms having been settled, it only remained for the Governor and Council to declare their assent to the Convention, "out of their earnest and unfeigned desire to promote the public good, peace, and tranquillity of the isle, and to unite the hearts of the inhabitants in a firm and indissoluble tie of obligation to His Sacred Majesty and Honourable Company's service." The Convention is comprised of fourteen articles, and though a lengthy document, we find it not only interesting, but necessary, to append the whole of it below. Something more than mere historical or antiquarian interest attaches to it; indeed, it may be said to be, to a certain extent, of some force and effect even at the present day, for in the tax-paper sent out to each proprietor of land (registered under Aungier's Convention) by the Collector of Bombay there are still printed the words "Pension and Tax." And here it may be remarked, by way of parenthesis, that the man to whom we are indebted for the "discovery" of this important document was no other than Francis Warden. If for nothing else, for unearthing Aungier's Convention, his name deserves to be recorded in the history of Bombay. But for his researches it might have been lost to us beyond hope of recovery, and what with moth and damp, would have shared the fate of other documents of which no trace can be found to-day. It is indeed strange that the Convention did not attract the notice of earlier writers. It must have been entered into and ratified when Fryer was in Bombay. Perhaps the learned doctor did not think it a sufficiently interesting or important measure to find a place in his book of travels. But Bruce's silence on the subject is more difficult to account for. Curiously enough, he has dealt with the administration of Bombay under Gerald Aungier at great length, doing justice to the virtues of this truly great Governor, and yet one of the most important events during his *régime* has been left unnoticed in his *Annals*. Speaking of Warden's services in this connection, Douglas observes :

"The two highest legal officers of their day, the Chief Justice, Sir Erskine Perry, and Sir Michael Westropp (died January 14, 1890, aged 73,

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at Cannes), saw what an important bearing it (the Convention) had on the land questions which came within the sphere of law, subject to their decision; and the one by his lucid explanation, so welcome to all who are outside the ken of legal phraseology, and the other by statements equally lucid, but showing a vast deal more of erudition and historical research, have made, we venture to say, the judgments in which these explanations and researches are contained, a standard and text book on the land question in Bombay to the legal student for all time coming."*

Let us now examine the terms of the Convention. Its fourteen articles are as follows †:

"1. That in consideration of the twenty thousand Xeraphins to be paid annually at three payments into the Honourable Company's treasury, the said Governor and Council do in behalf of the Honourable East India Company promise to put a final end to all claims, pretences, and law-suits whatever which have arisen or may arise between the Honourable Company and the people, touching the titles, lands or estates of palmeiras, cocoanut-trees, or batty grounds, throughout the whole isle, excepting what is by joint agreement accepted.

"2. That to the present possessors be granted new patents, confirmed according to the respective titles, by which their heirs and successors shall enjoy their estates.

"3. That if the Governor and his Council at present in power, or their successors, shall think good, in behalf of the Honourable Company, to exempt any person enjoying the said lands from paying his proportion of the said contribution, or shall make use of any part of the said lands for the necessary occupation of the public, abatement shall be made out of the said contribution, in proportion to the lands so exempted or disposed of, and this in respect the said contribution is made upon all the estates and lands of inheritance of the whole isle.

"4. That all estates of batty grounds and cocoanut-trees seized by former Governors and now in possession of the Honourable Company shall be restored to their respective owners, and they, their heirs and successors, confirmed in their said possession as above is expressed.

"5. That if, in time to come, any of the said lands and estates shall fall to the Honourable Company by any title whatsoever, as also if any

* *Bombay and Western India*, i. p. 88 (footnote). It is true, however, that questions of land-holding do not seem to attract the ordinary historian. The Act of 12 Car. II. which abolished feudal tenures receives little notice in popular English history.

† The Convention forms the substance of No. 8 of the appendix to Warden's original Report, but the copy of it in the High Court Law Library is sheared of all its appendices, nor does it find a place in the *Proceedings* of the Geographical Society (vol. iii. for 1839–40), where the Report itself is reprinted, though not in full. Campbell, however, has not omitted to publish it in the *Gazetteer Materials*, from which we have quoted these articles.

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trees shall be cut down, or any oarts of batty ground made use of for the building of cities, towns or fortifications, then the value of the said lands and trees shall be computed, and a proportionate abatement made out of the contribution, as is expressed in the third article.

"6. That as to the particular of dunging the palmeiras and batty grounds with fish, it is agreed unto by the Governor and Council and granted of as much import to the contribution that what part of the isle hath this year been permitted to be dunged with babaxim (small fish) shall be still permitted, reserving the ground which is comprehended within the line of the city which by God's assistance is intended to be built. But in respect the above said dunging the ground is forbidden generally by express orders from the Honourable Company of London, it is necessary that their license be had thereunto. For the effectual securing of this it is convenient that the people do send their humble petition to the Honourable Company by their ships, and the Governor and Council will intercede in their behalf and doubt not but that the Honourable Company will be pleased to confirm the grant, seeing it is so profitable to the public.

"7. That in case hereafter by reason of any storm or calamitous accident (which God divert) part of the said lands or estates be destroyed or rendered incapable of bearing fruit, it shall be referred to the Governor and Council then being to make such reasonable allowance of the contribution as shall consist with equity, good conscience, and ease of the inhabitants.

"8. That for the greater convenience and ease of the people in raising the said sum of 20,000 Xeraphins, liberty shall be granted to the interested for to nominate and appoint from among themselves such persons of sober and honest reputation as they shall think fit for the proportionate valuation of all estates and lands, for the collecting and receiving the said money and paying it into the Honourable Company's treasury, which said persons are to be confirmed by the Governor, and shall take oath on the Holy Evangelists to deal justly and impartially with all. That the Honourable Company shall not be at any charge in receiving the said sum. But for the greater authority and accommodation of the said persons so appointed, two officers shall be ordered by the Governor in behalf of the Honourable Company to assist them in their said office, as occasion shall require.

"9. That all royalties, rights, privileges, and immunities which did formerly belong to the Crown of Portugal, of (*sic*)* Foras and Royal rents of what nature and condition soever, shall be reserved as of right they belong to the Honourable Company.

"10. That in regard to the little isle Colio † (Colaba) reaching from the

* A mistake seems to have crept in while copying out this article from the original. It is probable that the word intended to be used was "and," not "of." The substitution of "and" certainly makes the article more intelligible.

† *Colio*, or as it was called by the Portuguese *Candil*, probably derives its name from the aboriginal race of fishermen still known as Coli, or Koli, who

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outward point westwardly of the isle to the paccari (*pakhadi*)* or parish called Polo (Palav=Apollo) † will be of great use to the Honourable Company, in the good design which they have for the security and defence of this whole isle, it is hereby agreed that it shall be totally and wholly reserved for the use of the said Company, they making such reasonable satisfaction to the person interested therein as hereafter is expressed.

"11. That whereas by the manifesto presented by the people the first payment of the 20,000 Xeraphins should begin the 9th of February next ensuing, it is agreed the first payment due on the 9th February shall be suspended to the 9th June following, being the year 1673, which said sum shall be left in the hands of the people, by the Governor and Council, towards purchasing and buying out those persons who have estates and lands in the Colio, whom they are obliged to satisfy in their respective demands, always provided that the people shall pay the quit-rent due the 9th February as was formerly accustomed.

"12. That in regard the Company have expressly ordered a survey to be taken of the whole isle, it is necessary that the lands and estates of each person be measured, the charges whereof shall be limited with a just moderation for the ease of the people.

"13. That there shall be reserved for the Honourable Company all grounds on the waterside within the compass of the isle to be disposed of in necessary occasions for the public, excepting such grounds wherein there are at present planted gardens of cocoanut-trees or rice-grounds, as also churches, houses, or warehouses of stone. And whensoever, for the public good, it shall be necessary to make use of any of the said places or properties, the Governor and Council shall make satisfaction to the interest in a reasonable manner. But the people are to take notice that in this they receive a particular favour from the Honourable Company, their Governor and Council, in regard that in all kingdoms of the

then occupied a village or hamlet on the isle, which would appear to be that now known as Colaba or Koolaba—Arabic for a strip of land running out into the sea. Colaba was otherwise known as the *Old Woman's Island*.

* Paccari or Pakhadi is Marathi for a paved path, or an alley (literally, a wing) of a village.

† "Polo, a corruption of Palwa," says Sir Michael Westropp, "is derived from Pal, which, *inter alia*, means a large fighting vessel, by which kind of craft the locality was probably frequented. From Palwa or Palwar, the bander now called Apollo is supposed to take its name." But Da Cunha combats this derivation. He would rather trace the origin of the word to *pallav*, which, in Marathi, means "a cluster of shoots or sprouts," also "an embellishment." But the author does not seem to be quite certain about this. For he adds: "What those features of embellishment were, whether connected with the cluster of the masts of the fighting boats or some physical peculiarity of the place, I must leave to the imagination of the reader." On the other hand, the learned Judge's derivation obtains force from the fact that both in Portuguese and Marathi there are words meaning a small boat corresponding to the word *palwa*.

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world the ground on the waterside from the distance of forty yards at least from the high water-mark belongs as a sovereign right and privilege to the Kings or Princes thereof.

"14. That seeing the principal aim and intention of this happy agreement and composition is designed for the security, tranquillity, peace and universal content of the respective inhabitants, the Governor and Council do in behalf of the Honourable Company establish and ratify this agreement, as perpetual and irrevocable, between the Honourable Company and the people, and for the further satisfaction of the inhabitants and people, they do promise to prevail with the Honourable Company to establish and confirm the same by patent made under their hands and seals, and given under our Hands and sealed with the Honourable Company's Seal in Bombay Castle, the 12th of November, anno. 1672." *

To this agreement the Governor and all the members of Council solemnly put their signatures—including Captain John Shaxton, Deputy-Governor, who "by reason of sickness being absent from the Public assembly this general agreement was sent him by the Governor's order and he declareth his full consent to all contents thereof as appears by his own handwriting annexed hereunto"—as also one hundred and twenty of the eminents of the *povo*, on behalf of all the inhabitants of the town and island of Bombay.

It may be said without exaggeration that Governor Aungier's Convention marks the most important epoch in the history of land tenures in Bombay. It was productive of far-reaching results which even his prophetic eye could hardly have foreseen. The best and truest verdict on this, perhaps the greatest event in an administration which was packed with incidents tending to the welfare of the people and the growth of the Company, is that recorded by James Douglas in the following significant words: "The Convention of Aungier was a great, a wise, and a statesmanlike measure; that it is not only the basis upon which the lands affected by it rest, but that upon it rests a goodly part of the wealth, population, and commercial greatness of our city." † And the far-reaching effect of the Convention is thus pointed out by Warden:

"At this early period, therefore, were the inhabitants secured in their possessions, and all who now hold property subject to the payment of

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. pp. 260–262.

† *Bombay and Western India*, i. p. 91.

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what is called pension, possess it by a tenure of which the Government cannot deprive them, unless the land is required for building 'cities, towns, or fortifications,' when reasonable satisfaction is to be made to the proprietors." *

It is true that the agreement was never formally ratified by the Court of Directors, though its last article distinctly made provision for its ratification. But, as Sir Michael Westropp pointed out, there is no doubt that it has been acted upon alike by the Government of Bombay and the inhabitants. Both parties had solemnly agreed that it should be "perpetual and irrevocable," and perpetual and irrevocable it has remained up to the present day. In the absence of positive proof of its ratification, the fact that it has never been repudiated either by the Company or the Crown has its own significance. Cooke's Convention was expressly repudiated, because it contained evidence of coercion on the part of the Portuguese authorities and of corruption on that of the Governor. It would be almost a sacrilege to speak of Aungier's Convention and Cooke's Capitulation in the same breath. The one was the outcome of free will—"it being the affair of their" (*i.e.*, of the *povo*, or estate-holders) "own request and seeking after"—the other of compulsion—"which capitulation," wrote the King, "neither he, Humphrey, was empowered to come unto, nor anyone else to impose upon him in contravention to a compact framed in so solemn and religious a manner." The former was entered into by a man whose integrity was unquestionable, the latter by one who had accepted bribes and forged title-deeds. Not that Aungier had fewer opportunities than Cooke to be corrupt if so minded. On the contrary, there was greater scope for corruption in 1674 than in 1664. Cooke was, after all, a makeshift Governor; but Aungier had succeeded Oxenden in the Government of Bombay by right of seniority. He might have done a number of things without attracting the notice of the Directors. For instance, like Cooke, he might have stooped to bribery and other vile practices to satisfy the claims of Portuguese landlords even at the expense of the Company's interests, and at the same time filled his own pockets. But, as Douglas observes, "no temptation of human passion or ambition could seduce Aungier from his allegiance to the one path of duty on which he had entered, and no accusation

* Warden's Report, para. 33.

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can be brought against the English for using their authority unjustly." Even a cursory glance at the Convention will convince everyone of the spirit of conciliatoriness and strict impartiality which permeates its fourteen articles. The Portuguese estate-holders were growing desperate in respect of their claims, and the authorities themselves had got tired of the disputes, which had been continuous from the date of the cession. Aungier must have felt the necessity of meeting the people more than half-way. Hence we find him acceding to most of the conditions, though not unmindful of the interests of his masters. The sum for which he bartered away most valuable lands in Bombay—20,000 xeraphins, or about £1,200 * a year—seems to us to-day a mere bagatelle. But we must not judge of the bargain by the money-value of the property obtaining at the present day. We should rather judge of it by the description of the town and island of Bombay and of its extent and importance which is left by Fryer and quoted above. A great part of the island was, as we have seen, practically worthless, being covered by the sea. The territorial acquisitions which the Marriage Treaty of 1661 brought to England, though considerable in area, were worth but little in value. If the whole island had been put up to auction at the time it might not have fetched an annual rental of even £2,000. So that the bargain struck by Aungier with the *povo* of Bombay was not as bad as it looks on paper. Moreover, the Convention did not touch the feudal superiority of the Crown; that was left intact then and for all time to come. Only, the possession of those who held lands on payment of a certain amount of quit-rent was confirmed on their guaranteeing to pay twenty thousand xeraphins every year. All land lying outside the island and having no owners was recognised as vested in the Crown—*i.e.*, virtually in the Company. In other words, the Company got whatever was not liable to rent, including the foreshore. This may not have appeared a desirable acquisition then, but it should not be forgotten that what was regarded in the days of Aungier as an utterly worthless piece of territory, namely, the foreshore, has proved to-day perhaps the most valuable property in Bombay. There is another point in the Convention deserving of notice, and that is the acquisition of the isle of Colio. If Aungier's Convention

* Probably equivalent to £4,000 or £5,000 to-day.

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had been productive of no other result than this, it would still have deserved a place in the history of Bombay. Aungier was quick enough to perceive the value of Colaba and the possibilities of its development. Being an island, it did not form part of the territory which the English acquired at the cession. But the Portuguese did not object to its alienation a few years after, as it was not worth their while retaining it without the island of Bombay. Hence it was purchased by the English—a purchase which is another proof of the foresight of Gerald Aungier. There is yet another event which proves the strict impartiality with which this, the most famous of our early Governors, tried to give effect to the terms of the Convention. Two years after it was entered into, the rumour spread over the island that the compact was not the outcome of the free will of the inhabitants, as it was represented to be, but a coercive measure. This must have surprised and irritated Aungier. In order to vindicate his conduct in the affair he immediately took certain measures, which have been recorded in the following "Consultation," dated July 16, 1674:

"Whereas the Governor and Council being given to understand that several inhabitants of the isle did give out divers words tending to the dishonour and discredit of the Honourable Company's Government on this isle, saying that the above said contract, made between the Governor or Honourable Company and the Povo, was an unjust and accursed contract. Whereupon the Governor summoned all the Povo to meet at a General Assembly in Bombay Castle this day, where, being assembled accordingly, the Governor declared the cause of their assembly here this day, desiring them to declare their minds freely without the least apprehension of fear concerning their sense of the said contract, and whether they owned those exclamations against it, declaring further that they were at their own liberty whether it should be disannulled and made void, or be confirmed. Whereupon the Povo in general stated they never exclaimed against the said contract, but were thoroughly satisfied therewith and of the justice thereof, it being an affair of their own requesting and seeking after. They desired that the Governor and Council would be pleased to ratify unto them and confirm the said contract. This was unanimously on both sides agreed on, and signed and confirmed by both parties in Bombay Castle, the 16th July, 1674, 26th Caroli Secundi Regis Anglia." *

The above passage testifies to the solicitude which Aungier

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 262.

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invariably showed for a free expression of public opinion. He was most anxious that the Convention should rest on the people's free and unfettered will, without the least pressure from outside. Curiously enough, those who objected to the terms of the compact were his own countrymen, who were smitten with earth-hunger even at that early stage in the development of Bombay. They refused to close with the Convention, probably because more favourable terms were not offered them. "But Aungier was inexorable," writes Douglas, "as every English landholder knows to this day by his tax-papers. We cannot make fish of one and flesh of the other. Pay like your neighbours." Even after the Convention was ratified some of the malcontents seem to have complained to the Court of Directors. Aungier's reply was characteristic of him. In a despatch dated January 17, 1675-76, he wrote:

"When the contribution of 20,000 Xeraphins per annum raised on the lands were established, certain English, very few in number, who possessed lands, refused to pay what was assessed on them, pretending they did not sign the contract, which we thought not prudent to take much notice of during the war. But, since, we have demanded what they owe thereon, which they have much complained of, and we presume will present your Honours with a petition, whereunto we have only to say that a few might be gratified if the consequences were not evil. Private property is generally too eagerly pressed, without regard to public inconvenience. It may so fall out that a great part, if not the whole, of the lands on the island may fall into the hands of the English, who might pretend the same privilege, and therefore we thought it not safe to begin an evil example. But we submit to your better judgment; it were well if the English were encouraged to plant on the island, which would be made secure, if all the land were possessed by them. But some better way may be found to privilege them above others, which we recommend to your Honours' better judgment." *

Aungier may have been wrong in his surmise, as Douglas thinks he was, that, if the English proprietors were excluded from the provisions of this agreement, they might one day hold the fee-simple of the entire island and jeopardise the feudal superiority of the Crown; but the fact that reflects credit on the man is the sense of justice which actuated him to avoid any distinction whatever on the score of racial diversity.

* Bombay High Court Reports, iv. . 45, note.

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There are a few points in connection with Aungier's Convention which deserve a passing notice here, as some doubt seems to have been entertained regarding them. The first is that the military service which the estate-holders were required to render to the King was left absolutely untouched by the compact. The then possessors of lands and estates in Bombay were confirmed in their possessions on payment of a yearly contribution of 20,000 xeraphins to the Company, *including the quit-rent, or foras, which was paid at the time.* But there was no mention made of the military service in this clause, nor was it stated anywhere in the agreement that it was commuted by the authorities in consideration of the annual payment. And when, a few years after, some of the Portuguese inhabitants refused military aid during the war with the Mogul, on the ground that under Aungier's Convention they were exempted from further liability in that respect, they were considered to have forfeited the rights to their lands. It was not till 1718 that a tax was imposed on the landholders in lieu of military service. Another point, perhaps more important than the above, is that the Convention referred only to fazendari lands, and not to foras or salt batty grounds. Indeed, the salt batty grounds—that is, those grounds which were submerged and recovered from the sea by persistent efforts—were not in existence at the date of the compact. All land in Bombay, when Gerald Aungier was Governor, may be broadly classified into fazendari land and Government land. This classification has its origin in the mode in which the assessment was made, for a different rate of tax, pension, or assessment was applicable to Government land and fazendari land. The term "fazendari" is derivable from the Portuguese word *fazendeiro*, from *fazenda*, an estate, but there seems to be some doubt as to its meaning. According to Da Cunha, "fazendeiro" means an estate-holder or proprietor; but Sri Erskine Perry says that the word never seems to have been used to designate a proprietor, and that it does not appear that the Portuguese law contains any trace of a tenure similar to that called fazendari in Bombay. He defines it as "a cultivator, a tiller, a husbandman." But, as already noted, in course of time the fazendar of an estate also became its proprietor, by right of usurpation, if not of ownership. On this point Perry, C.J., makes the following observations in his lucid and learned

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judgment in *Doe d. Dorabji Dadi Santuk* v. *The Bishop of Bombay*:

"The origin of the relation between fazendars and householders, where the possession is ancient and no proofs of a contract are forthcoming, is altogether unknown. Whether the fazendars were the original owners of the soil, or mere cultivators and farmers holding of other persons, such as the Jesuits, and religious houses once existing in Bombay; whether the house occupiers have encroached upon the fazendars, and have turned their permissive right to occupy into an indefeasible right on certain conditions, like the copyholders and tenants of the Northern manors in England; or whether the fazendars have encroached upon the Government, and usurped the right to claim the Government assessment from the tenants, it is by no means easy to say." *

The fact that the Convention speaks of the lands as "lands of inheritance," and makes mention of "the heirs" of the owners, coupled with other evidence, has led Sir Michael Westropp to conclude that even at that early date the Portuguese inhabitants were amenable to the laws of England rather than to those of their own country. But the latter argument seems rather weak: "heirs," in Portuguese as in Latin Law generally, is the proper and accepted word to designate successors, testamentary or intestate.

Let us now cast a rapid glance at the events which followed Aungier's Convention. The only other incident of note that occurred before Gerald Aungier passed away in 1677 was the raising of a militia in Bombay, consisting of six hundred men, maintained by about one hundred of the principal landowners on the island. The patriotism displayed by the inhabitants of this Imperial city, even at that early stage, deserves special mention. This help was not tendered in lieu of the military services which they were expected to perform under their feudal tenure; it was in the nature of a supplementary aid to Government. On Mr. Henry Oxenden succeeding as Governor, a report was submitted to the Directors on the internal affairs of the island, stating that the revenues from Customs then amounted to 30,000 xeraphins, and the duty on tobacco to 20,000 xeraphins, per annum. He added that though the inhabitants were numerous—the population of Bombay having increased from ten thousand to sixty thousand during Aungier's beneficent administration—they

* Perry's Oriental Cases, p. 504

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mostly belonged to the poorer classes, to whom every indulgence had been shown in the hope of inducing a larger number of wealthy native merchants and manufacturers to settle on the island. The authorities had decided to make Bombay the chief centre of trade and power on the Western coast. With the view of enhancing its importance, commercially as well as politically, they did everything in their power to attract people to it from outside. They retained the Gentoo soldiers in their service, and gave them lands for maintenance, on condition of their paying half the produce of the soil to the Company. To the English soldiers was offered half-pay after seven years' service, with land to settle on if they gave their labour in return for the cultivation of it. In short, every possible facility was afforded to the immigrants, and in their zeal to populate the island the Government sometimes jeopardised their own interests. The increase of population necessarily meant a corresponding increase in civil and military charges, and a decrease in the extent of the property available for cultivation. The Directors thereupon ordered, in 1679, that all houses on the island should be valued and a proportionate tax imposed upon each, that the uncultivated land be surveyed and let out on rent, and that the marshy ground be drained and rendered fit for agriculture. As regards this latter proposal, the Bombay Government had already decided, in 1677, to entrust the reclamation of "flats"—as marshy lands in and around Bombay came to be known in later days—to private individuals.

"We are of opinion," they wrote, "that it is more consistent with your interest to leave them to be drained by others than to drain them at your own charge. We therefore shall embrace any fair proposals by able undertakers, reserving to you those just rights and advantages which we can acquire."

The Court of Directors approved of this suggestion, adding that

"if from any of the coasts near Bombay you can exchange equa quantities of salt for rice, nothing can be so profitable to us as to convert all those drowned lands when they are rescued from the sea into salt-pans after the manner of those at Rochelt in France or Santuvaly in Portugal."

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But the undertakers declined to pay any other rent to the Company than a bare acknowledgment for reclaiming inundated land, and at the same time claimed the fee-simple in them for ever. This the authorities naturally objected to, but offered them the lands on a lease for a term of years, on payment of a small quit-rent, reserving to themselves the fee-simple. A tax on houses was imposed in 1679, but it did not suffice to defray the cost of administration; so, a few years after, a duty of half a dollar was levied on all ships anchoring in the harbour of Bombay, and of one rupee per annum on each shopkeeper on the island. But even these expedients failed to equalise revenue and expenditure. Besides, the growth of population in Bombay did not bring in its train a corresponding increase of wealth and prosperity. For ten years after the Convention was signed, the landlords complained that the proportion of the quit-rent they were required to pay under it was too high. The authorities were, however, of a different opinion. In 1682 the Directors wrote to the Bombay Council as follows:

"We do not wonder the Povo (people) would not pay us the quarter parts of the lands they possess; but that was the measure, and we shall expect the performance of it. The Xs.20,000 was computed at that time as agreeable to the proportion of a fourth part, and it may be was fully so much then. But we know the mildness of the Company's Government. The great charge they have been at in the fortifying of Bombay, and consequently the increase of trade, hath augmented the value of the lands of that place, and it is but equitable that the revenue should grow better with the meliorating of their lands at our great charge. We, therefore, require you to exact that proportion from them." *

In 1689 Bombay was raised to the dignity of a Regency, and in order to make it commercially supreme, certain improvements and innovations were proposed to be carried out, as, for instance, the establishment of a post office and an insurance office. To meet this extra expenditure it was resolved that a progressive duty should be imposed of from one shilling to two shillings and sixpence on every house in Bombay. But while every effort was being made to improve the financial condition of the island, unforeseen circumstances minimised the chances of success. We have devoted a long chapter to the decadence

* Campbell's *Bombay Gasetteer Materials*, xxvi. part iii. p. 263.

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of Bombay at this period, and have investigated some of the causes which contributed to it. One of these was the invasion of Bombay by the Siddee, who had managed to get possession of Mahim, Mazagaon, and Sion in 1688. On this occasion the Jesuits were found to have given active support to the enemy, and some of the Portuguese inhabitants had refused to assist in the defence of the island, claiming exemption from military service on the pretext that Aungier's Convention had absolved them from such liability. The Portuguese envoy in London presented a memorial to the King in support of this contention. But the Directors of the East India Company had no difficulty in exposing its fallacy. They replied that the inhabitants of the island of Bombay, while they were subject to the King of Portugal, paid one-fourth part of the profit of their lands as quit-rent, which President Aungier, soon after the island came into the possession of the Company, commuted for an annual payment of twenty thousand xeraphins, reserving to the Company, as representing the King, the right to the military services under which the lands were held by the Crown of Portugal; that during the late war with the Mogul, not only had the payment of this sum been refused, but the right to military service denied, and during the recent hostilities the Portuguese inhabitants had, by refusing military aid, forfeited the rights to their lands, though it was admitted that they, by the cession of the island to England, had become subjects of the King, to whom by their tenures they were bound to afford military service, either personally or by substitute, more particularly during an invasion; and that lands held by ecclesiastics were equally bound to furnish military service either by the possessors or by their substitutes.* In proof of this they called attention to the fact that the tenure under which military service was required was general all over India, whether the colony was French, Dutch, or Danish. Accordingly, the lands of the Jesuits, who had actively assisted the Siddee, were ordered to be confiscated by the Deputy-Governor of Bombay, but final decision was deferred until the arrival of the President from Surat, who was to adjudge the claims of the Portuguese and restore the lands to such of them as could exculpate themselves, or confirm the right of the Company

* Warden's Report, para. 53.

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to such portions as had been the property of the guilty. The Court of Directors approved of this measure, holding that the confiscation was justified by the precedent of Signor de Tavora, which had been decided by Charles II. and the Privy Council twenty years before, but at the same time ordered that the lands be restored to such of the claimants as might be found innocent. Conformably to these orders, lands were restored to those proprietors who were proved not to have actually assisted the Siddee in his invasion, on condition of their paying one-fourth part of the produce for the first year as a fine. Other lands in Bombay also became Government property by virtue of the forfeitures made to the Company. For instance, as we have already seen, when Rama Kamati was found guilty of treason and conspiracy, his most valuable estate within the Fort was confiscated, and eventually sold to one Hurjeevan Surput for Rs.22,600. And again, when, in consequence of the Portuguese obstructing the communication between Mahim and Bandora and harassing the English, a proclamation was issued on July 5, 1720, requiring all persons who lived in other parts and had estates on the island to repair to Bombay with their arms within twenty-one days, on pain of forfeiture of their property in case of non-compliance with the order, the estates of some of the defaulters were seized by the Government. For, on the expiration of the prescribed period, none of the absentees appearing, the Vereadores were ordered to enter upon and receive the produce of their estates, and those who had demands on such property were referred to the Chief Justice.* The Portuguese landlords seem to have resisted the action taken by the English in the matter (which indeed appears high-handed), and according to one report they even maltreated the two messengers who conveyed the proclamation to Salsette.

"They seized and carried the unfortunate pair," says an early historian, "with irons on their limbs, in mock triumph, first to Tanna, then to Bandora, where they put their fortitude to the test by hoisting them on a gibbet. The two men of peace were indeed suffered to return sound in wind and limb; but according to their own artless admission, they were made very sore and mighty terrified." †

* Warden's Report, para. 66.

† *The Bombay Quarterly Review*, iii. 1856, p. 63.

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However, a cannon-ball thrown into the fortified church of Bandora brought the Portuguese to their senses, and the terms of the proclamation were carried out without further resistance.

Warden has been at some pains to ascertain what, precisely, were the lands that belonged to private individuals and what to the sovereign at the date of Aungier's Convention. The materials at his disposal were very scanty, and most of them of doubtful value. But with the help of Fryer's description of the town and island of Bombay, combined with his own research into the early history of the place, and other collateral evidence, he has arrived at certain conclusions, which may be summarised as follows: That the whole space within the walls of the Fort, with the exception of the custom-house, warehouses, and the few houses built by the Company, was private property; that the space at the end of the town also fell into the same category; that Parell and its demesnes, including Sion, belonged to the Jesuits; and that the side where the Salvesong was situated, "all covered with trees of cocoa, jawkes and mangoes," must also have been private property, inclusive of the lands held by the ecclesiastics.

"In regard to the Crown lands," says Warden, "we are left entirely in the dark, with the exception of the 40,000 acres of good land covered by the sea, Malabar Hill, and Old Woman's Island; but even supposing that more than a moiety of the island was in a barren state, and consequently public property at the period of the cession, a considerable portion must have been alienated under the operation of the orders of the Honourable Court to invite strangers to settle on the island; to let the uncultivated land out on rent; to assign portions of land to Gentoo soldiers for their maintenance, the Company receiving half the produce."*

To this must be added the wholesale forfeitures authorised by the Directors at the commencement of the eighteenth century, which must have comprised large tracts of ground at Parell and its vicinity, mostly belonging to the Jesuits. Moreover, as a result of the Court's orders in 1669, to purchase certain lands in the immediate neighbourhood of the Fort, several private estates must have changed hands and become the property of the Crown. But after making allow-

* Warden's Report, para. 65.

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ance for all these considerations, the broad fact remains that, at the end of the seventeenth century, the greater portion of cultivated lands within the Fort belonged to private individuals rather than to the sovereign. The next question inquired into by Warden was the manner in which the Government were in the habit of leasing lands belonging to the Company, and the principles on which this practice was based. It may be said at the outset that no definite policy seems to have governed the action of the authorities in the matter; and it was this indefiniteness which ultimately led to the confusion regarding the tenures of land in Bombay. No reliable information as to the terms on which lands were leased out since the date of the Convention is forthcoming, but Warden expresses the opinion that, until 1718, the new tenants held their lands as feuds at the will of the lord under an implied engagement to afford military service when required. He also lays down the following startling proposition:

"That the mode in which the Government has been in the practice of permitting individuals to occupy ground, or, in other words, that the custom of the manor has, upon every principle of equity, converted the public into private property—lease into copyhold tenures—and that the Company have forfeited whatever right they might have possessed to resume lands, or to alter the tenure which custom has established."*

But if the *mode* observed by the Government pointed to this conclusion, the *intention* of the Company seems to have been totally different. Whether with regard to cultivated land within the Fort or uncultivated ground without, they had always insisted on the right of the sovereign being strictly guarded, and were opposed to the grant of a fee-simple or absolute inheritance of any house or ground. This is made clear by what the Directors wrote to the Bombay Government on March 28, 1717, when it was brought to their notice that an old house and ground in Bombay, called Sir John Weybourne's estate, was sold to one Mr. John Hill, "to him and his heirs for ever." Disapproving of this transaction, they wrote:

* Warden's Report, para. 69. It is needless to remark that a valid custom must go back in its origin to the year 1189 A.D.

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"We do not like this way of giving anybody a fee-simple or absolute inheritance of any house or ground on Bombay. It may one time or other be of ill consequence. We will have no more of it. But do allow you to grant leases for a term of years or for lives with a liberty of renewal. In that case do not give a very long term; for once Bombay could be made secure and fit to invite merchants and useful inhabitants to reside there, we cannot doubt the ground-rents rising considerably."*

We find that Sir John Weybourne's estate changed hands at this time rapidly and rather mysteriously.

"There is something extraordinary," says Warden, in paragraph 220 of his Report, "in the sale and repurchase of this old house and ground. On the 20th of February, 1715, the Government bought of John Hill, in behalf of the Company, all that messuage, &c., commonly called or known by the name of 'Sir John Weybourne's House,' for Rs.3,000, and on the 9th December, 1719, the Government sell this very property to the very same person for Rs.180 only."

This is certainly inexplicable. The value of property in Bombay could not have sustained such a heavy fall in the course of a few years. The tendency at the time was rather to rise than decline. There is something more in the sale and repurchase of this house than meets the eye. We have already noticed that, under Aungier's Convention, though the amount of the quit-rent payable to the sovereign was fixed, the right to the military services of the tenants was not commuted, but rather expressly recognised and reserved. This duty, however, seems to have proved irksome to the estate-holders, and more than one attempt was made by them to get an exemption. In 1715 the Vereadores proposed to enter into an agreement with the Government, whereby they craved exemption from finding trained bands of militia in consideration of their paying fifteen thousand xeraphins every year. The matter was referred to the Company, who called upon the Bombay Government to report whether the sum was a sufficient equivalent, and if it would alter the ancient constitution of the island in such a manner as to prejudice the Company's interests. Whether such a report was submitted or not, we do not know, but there can be no doubt that military service continued to be exacted. Two years after, the Directors, in their despatch dated February 21, 1717, reminded the Government of their promise to improve the

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 301.

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ground-rent within the city walls by letting lands on renewable leases, or by fines or quit-rent, or whatever way the Government should judge best for the Company's interest.

"The consideration of their prodigious charge," they wrote, "and the people's protection and liberty are very cogent arguments, if rightly managed, to convince every one why that ground ought to be valued higher than it otherwise would."

Probably in pursuance of these orders, military service, so long exacted from the estate-holders in Bombay, was, in 1718, commuted to a tax imposed on "all the inhabitants residing within the town walls." This tax marks another important stage in the history of landed tenures in Bombay, for it is said to have altered the ancient constitution of the island, the Company having thereby resigned their feudal claims.* About this time the Government took upon themselves the defence of the town, and surrounded it by a wall."† Finding the revenues inadequate to meet this additional expenditure, they had to resort to certain expedients, one of which was the imposition of the above tax. But the principal inhabitants complained that the quit-rent was raised too high, and several of them evaded payment by building houses outside the town wall. Finding their complaint reasonable, it was resolved that the quit-rent should be reduced by one-half, but by way of supplying the consequent deficiency in the revenues, it was, at the same time, ordered that all houses within the distance of a cannon-shot from the city should pay the same quit-rent in proportion as those built within. A proclamation was drawn up, embodying the above terms, and published, as usual, on October 3, 1720.

During the next decade the land question was allowed to drift, probably because the Government was too much occupied with efforts to restore the revenues of the island, which had decreased to an alarming extent. They did everything in their power to invite strangers to settle in Bombay, on condition of their cultivating barren land or reclaiming ground lying under

* By 12 Car. II. (1660) "knight-service" was generally abolished in England.

† In an inscription which was removed from the Apollo Gateway in the middle of the last century, it was stated that the town wall was completed on June 1, 1716, when Charles Boone was Governor.

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sea water. The whole of Malabar Hill was let on lease at a rental of only one hundred and fifty rupees per annum; and the island of Colaba also for a proportionate amount. An extensive plot of ground lying along the Back bay was let in 1728 to five persons, on condition that they should plant 1,355 cocoanut-trees. In this connection it is interesting to observe that some years previously the Court of Directors had ordered that all cocoanut and toddy trees standing within a mile of the principal fort should be felled, but it was some time before these orders were carried out. High value was set on the services of men known as Bhandaris, who supported themselves by cultivating palm-trees and drawing and distilling arrack. They had enjoyed the privilege of selling arrack for a long time past, on condition of rendering military service and keeping a guard at the Governor's door from 9 to 11 a.m. and 3 to 5 p.m. Seven years after the island had passed under the Company's rule, a sum of 200 xeraphins was demanded of them by the Government for allowing them to continue to enjoy the monopoly of manufacturing and selling arrack, but afterwards all their dues were remitted in consequence of the bravery they displayed at the time of the Siddee's invasion. It was on account of their warlike qualities and their splendid capacity for work that an application from a number of Bhandaris, desiring to settle on the island, was favourably received. The petition was presented to Government through their Mukadum, Esu Naik, who proposed renting between three hundred and four hundred cocoanut-trees belonging to the Company, situated within the town walls, at a certain yearly rent for each tree, for the term of seven years. In this connection, the Consultation dated April 20, 1733, records the following entry:

"As the said Bhandaris are highly deserving of encouragement, being not only laborious and industrious in their occupation, but likewise bred to the service of arms and ready on all occasions, it is agreed that the said Esu Naik have betwixt three and four hundred trees for the term of seven years at the usual rent of four and a half larees * for every tree or three-quarters of a rupee silver money or sixty pice in pice money. That they shall deliver up the said trees at the end of the sixth year in the same good condition that they received them, but shall pay the said rent for the term of seven years complete, as is more particularly

* Larees or larims were a peculiar kind of money formerly in use on the Persian Gulf and on the West coast of India.

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expressed in the conditions of this farm; and that the said rents shall be punctually paid in quarterly payments."*

Even at that early date Government were keenly alive to the value of cocoanut-trees, which brought in a steady income and provided a welcome addition to the revenues of the island. Cocoanuts both at Bombay and Mahim were also sold by lots, every year, to the highest bidder, at what was known as a public outcry; and in 1733 we find that Navroji Rustamji and Sivaji Dharamset were the highest bidders at Rs.22½ per thousand of 1,100 cocoanuts. The arrack rent about this time also amounted to the respectable sum of Rs.14,300.† This is, however, somewhat of a digression. The fact worth noting is that, until then, no system of leasing land within the Fort or on the island generally was regularly observed, nor were the titles of householders ascertained, nor was a survey of all or parts of the island attempted until the year 1731, when, for the first time, it was ordered that a survey should be made of all lands within the Fort, whether occupied by natives or Europeans. In that year an attempt also seems to have been made to equalise quit and ground rents. The Consultation dated December 3, 1731, contains the following entry:

"The mensuration of the ground within the town walls at present occupied by the English as well as Black inhabitants made, by order of Council, by a Committee of this Board with the assistance of Captain William Saunderson, Clerk of the Works, and of Ramji and Rango, Purvoes, is now laid upon the table with a calculate of quit-rent and ground-rent at a certain sum the square yard, which is and has been hitherto paid in a manner entirely unascertained, whereby some people have been prejudiced and others favoured. To prevent this abuse for the future it is agreed that the English inhabitants shall hereafter pay the same quit-rent for their houses that they have hitherto been assessed

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 333.

† In this connection Douglas relates the following amusing story: "Norman Macleod's conversation on the Tree Tax, on the morning after his arrival in India, was, as nearly as I can remember, 'What sort of a tree is that?' 'A palm-tree.' 'Yes, I know it's a palm-tree, but what kind of palm-tree?' 'A toddy palm-tree.' 'Yes, I think I have heard the name before; and what are these letters painted white upon it?' 'For taxation.' 'You don't mean to say the trees in India are taxed?' 'Yes.' 'Oh, India! the very hairs of your head are numbered!'" (*Bombay and Western India*, i. 98, note).

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in. But for such ground as they may have taken in since the building of their houses or may hereafter take in, they shall pay an additional quit-rent of 6 res for each square yard, but be free of ground-rent. All Native or Black inhabitants shall pay for the ground that they now occupy or shall hereafter occupy a quit-rent of 6 res and a ground-rent of 5 res for each square yard." *

Warden gives a long extract in the 75th paragraph of his Report, apparently quoting from the Consultation of the same date (December 3, 1731), observing that in order to prevent the abuse arising out of the loose manner in which quit and ground rents were exacted,

"it was resolved that all persons that have a mind to build apply to the Land Paymaster, and signify to him in what part of the town and what sort of a house they design to build, and on the Paymaster's being satisfied that the spot of ground they have pitched upon is a proper situation for such a house, he is to grant them his license for building, receiving as fees for the same two rupees and no more, provided the said house is built with stone and mortar and covered with tiles, and for such houses as are covered with cadjans, one rupee; and upon any of the inhabitants applying to the Secretary for a lease or certificate to ascertain their title to the house to be built by license of the Paymaster, he is to grant them such a lease or certificate for the same on paying one rupee and no more."

According to Campbell, the Bombay Government went a step further, and suggested to the Court of Directors, in 1732, that both ground-rents and quit-rents should be remitted. Without awaiting the Company's instructions in the matter, they seem to have suspended the collection of these rents, for when, two years after, the Directors decided not to remit or abate either of these two taxes, they were obliged to recover all the arrears. This naturally gave rise to much discontent among the estate-holders. They had, from the commencement, resented the payment of either ground or quit rent, and in a petition submitted that, if Government stood in urgent need of money, a further impost might be levied on trade rather than that they should be compelled to pay a tax which was the more vexatious to them on account of its novelty. To us this seems a weak argument to advance, for rent is recognised as the least objec-

* Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 302.

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tionable form in which the subject can pay directly for the support of the State, while import duties are always felt as impediments to commerce. At the same time, it should be remembered that the rents had been fixed for good and all by Aungier's Convention. The petitioners took care to point out that

"in the first agreement between the Honourable Company and the inhabitants of this island, it was stipulated that in consideration of the annual payment of xeraphins 20,000 (which pension is now collected), the land that had been taken from any of the inhabitants should be restored and their estates ascertained, when your petitioners conceive it was intended they should not be subject to farther taxes on estates. Notwithstanding which they now pay quit-rent for all houses built on their own ground. Also that when they made a voluntary gift of Rs.30,000 (besides the 2 per cent.) towards building the town wall, they humbly hoped they should not be liable to any farther charge for such ground belonging to the Honourable Company as they might obtain liberty to build upon, though they are now obliged to pay the heavy duties of both ground and quit rent."

But their prayer could not be granted, as the Court of Directors had already issued orders that both quit-rents and ground-rents should be continued as before and the arrears forthwith collected. So inefficient was the machinery of the State, however, that for a year and a half no steps were taken by the authorities to enforce the orders, issued in 1731, that all persons intending to build on the island should apply to the Land Paymaster and obtain a license or certificate from him. This neglect on the part of Government grew so scandalous that they were obliged to adopt stringent measures, in consequence of which the following orders were issued on May 18, 1733:

"It being found by experience that little regard has been paid by the inhabitants within and without the walls to an order of Council made the 3rd of December, 1731, directing that all persons who have houses, or hereafter may have any, should apply to the Secretary for a regular lease of the said house or houses, paying him one rupee as his fees for drawing out the said lease, it is agreed that we order a publication to be made enforcing the said order, under penalty of dispossessing all such persons as shall not produce an authentic lease signed by the Secretary in six months from the date of the said publication, ascertaining their right to the said house or houses and the ground they are built on."

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It was at the same time provided that the Secretary, in framing such leases, "should grant a term of forty-one years, renewable on the party's paying a fine of a half-year's rent of the said house or tenement, according as the same shall be valued by the Second in Council and the Collector of the revenues for the time being and the possessor." * The above proclamation betrays the ignorance of Government regarding the nature of landed tenures then in force in Bombay, as well as the weakness of their position. If they had really understood the question they professed to decide by one stroke of the pen, they would not have issued orders which were as ill-considered as they were unjustifiable.† For, what did the authorities attempt to do? They required all the landholders indiscriminately—even those whose estates were secured under Aungier's Convention—to apply for regular leases for the term of forty-one years, renewable on the payment of a fine, on pain of forfeiture of their property in the event of their refusal; in short, they tried to transform, all of a sudden, possessors in fee-simple into lessees. "Was it to be expected," asks Warden, "that tenants who had obtained possession according to the custom of the manor would have taken out leases for forty-one years for lands which had descended in the family for upwards of half a century probably?" The Bombay Government of 1733 evidently entertained such an expectation. And what was the effect of this injudicious proclamation? Six months after its publication it was discovered that no leases had been applied for and no forfeitures made; in fact, the land revenue remained as before under no regular system, and the solution of the problem of

* Warden's Report, para. 76.

† In this connection it may be noted that in 1742 the Government of Bombay undertook to inquire into the origin of the pension tax and the manner in which it was first settled and assessed, and eventually to discover if it was kept up to the original scale or if any augmentation could be effected. The inquiry was made under considerable difficulty, owing to the dearth of materials for a competent knowledge on the subject, and particularly as no assistance was forthcoming from any of the registers then in existence. Much of the information having been collected from the most intelligent inhabitants on the island, the report was prepared by the President and Council and preserved in the Consultation Book of the period for future guidance. It will be found in Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 304, and is well worth reading, as it throws much valuable light on the subject treated of in this chapter.

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landed tenures became more difficult than ever. A variety of other measures of a similar nature were adopted by Government with the view of ascertaining and preserving the sovereignty of the Crown, on the one hand, and the rights of the people on the other, in the soil, but they were not productive of any practical results. "We are," says Warden, "as much in ignorance of the royal rights on the island in 1814 as our forefathers were two hundred years ago." And we may add that our ignorance has not lessened with the lapse of another century. Warden is most emphatic in his denunciation of the policy pursued by Government in this matter. He has been driven to the conclusion that these hasty and ill-considered proclamations have weakened the Company's rights, and in a manner legalised the claims of private individuals.

"The mere issuing of a proclamation," he observes, "proves nothing; those futile and unmeaning measures appear to me as strong presumptive evidence against the Company. The proprietors of land have disobeyed, or rather disregarded, the orders of the Government in every instance, the penalties fulminated against any act of contumacy have not been exacted, and they still remain in undisturbed possession." *

In proof of this may be cited another measure which was adopted in 1739. At this period the Marathas had come into some prominence through the prowess of their arms, and there was some fear of the island being attacked by them. Both the Government and the public were agreed upon the necessity of constructing a ditch round the walls of the Fort, which was in a wretched condition. The principal merchants of Bombay became so alarmed at the prospect of being governed by the Marathas that they willingly untied their purse-strings and, in 1739, subscribed the sum of Rs.30,000 towards the construction of the ditch, "which," say the records of the period,

* Later on in the report, while controverting Dickinson's opinion on this point, he again observes: "I do contend that the Company have relinquished their right to resume any part of the ground within the Fort paying rent at their will and pleasure. They may resume it for public purposes on paying a full value of the property. That 'the most rigid orders have been issued from time to time to preserve its spirit,' I admit; but I have failed to discover a single instance where those orders have been 'enforced.' The non-enforcement of those orders affords to my mind presumptive evidence of the weakness of the Company's cause, and of an abandonment of their rights."

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"was as much as could have been expected from that body, considering the low declined state of trade." At the same time that this work was commenced, Government remarked on

"the irregular practice that had obtained of planting trees and building houses, through the permission or connivance of the Government, within the distance prescribed for the safety of all regular fortifications, against which the necessary precaution having hitherto been entirely disregarded, it behoved the Board to come to such a resolution as may effectually prevent this evil in future, and obviate such irregularities and inconveniences as have arisen for want of a proper control in the buildings, works, and plantation of trees both within and without the walls."

In accordance with the above Consultation, the following order was duly promulgated:

"That no houses be made or rebuilt, nor any trees planted, within the distance of four hundred yards from the town walls, nor any houses erected within the said walls until the ground be surveyed by the Engineer for the time being, and by him to be recommended to the Land Paymaster for his approbation and leave."

In spite of these orders, however, houses and trees were not removed till long after the middle of the eighteenth century. So late as in 1757 seven or eight hundred houses were situated within the proscribed limits; in 1759 a hundred and thirty-five houses, chiefly inhabited by Purvoes, were to be found close to the Apollo Gate; and later still, several houses and trees were standing near the wall at the north end of the town. According to one authority, the continued delay in the execution of these orders probably arose from the great expense of compensating owners of property, as it was found that even within a radius of a hundred yards from the town-wall the houses and trees were valued at nearly Rs.37,000.* But there was another cause, and a more likely one, which might also account for the delay. The owners of houses had their own way of influencing the authorities. The device known as "the greasing of the palm" was not unknown at the time. It was extensively practised in those early days. Indeed, if we are to believe the records of the period, the most daring forgeries were sometimes perpetrated. For instance, when a search was made for the original proclama-

* *The Bombay Quarterly Review*, iii. 1856, p. 333.

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tion published on July 6, 1739, prohibiting the erection of houses and planting of trees within certain limits of the town walls, it was found to have been surreptitiously erased. The consequence was that householders disregarded the orders it promulgated in the most flagrant manner, and the authorities were powerless to enforce the penalties as they could not prove that any such orders had ever been issued.* Rents were also fixed disproportionately at times, and there is at least one instance on record to prove this. The Consultation dated June 18, 1742, has the following entry:

"In the account delivered to the 31st July, 1741, the rates for people within the town wall are 6 res the square yard for Europeans, 11 res for others, and 30 res for one Fakir Raffik No. 238. Why this is so we know not. For those without the town wall the rates are 15, 30, and 45 res the square yard, but why the same differs must be explained." †

There were probably several other entries in the Consultation Books of the period requiring elucidation, but which were not brought to the notice of the authorities, and never explained.

The chapter must now be brought to a close. We are afraid we have far exceeded the limits at first assigned to the examination of landed tenures in early Bombay. This is at best an imperfect attempt to trace the history of a subject which perhaps is not capable of an adequate treatment on account of the paucity of material. Those who wish to follow the further course of its history must study the pages of Warden's invaluable report. Much interesting information on foras lands in Bombay, or salt batty grounds, may also be gathered from the report submitted to Government in 1843 by Mr. Le Messurier, the then Advocate-General, and the papers published in connection with it, which have been reprinted in *Selections from the Records of the Bombay Government*, No. III., N.S. Besides these two sources, there is the *Statistical Account of the Town and Island of Bombay*, by Mr. J. M. Campbell, the eighth chapter of which deals exhaustively with revenue and finance from the date of the cession. Warden, Le Messurier and Campbell tell us almost everything that can be known regarding the history of our landed tenures, except in so far as comparative jurispru-

* *The Bombay Quarterly Review*, v. 1857, p. 170.

† Campbell's *Bombay Gazetteer Materials*, xxvi. part iii. p. 304.

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dence may furnish us with reasonably secure inferences from the practice of other places.

In conclusion, we give below a brief summary of the events described in this chapter. They have followed one another in quick, and rather bewildering succession, and a short recapitulation may be useful. To begin from the beginning, the town and island of Bombay was received by Humphrey Cooke from the Viceroy of Goa without the Crown lands having been first ascertained or a statement given of their extent. It thus became almost impossible to discriminate between the inhabitants who were legally possessed of sufficient titles to their estates and those who had no right whatever to hold even a square yard of land in Bombay. Some of the best estates refused to pay rent, and produced titles which could not be disputed, though believed to be fictitious. Government were thereupon obliged to resort to high-handed action, which caused much discontent and gave rise to many a bitter dispute. With the view of allaying the fears of the inhabitants, Gerald Aungier entered into a Convention with the *povo* of Bombay, commuting for the annual payment of 20,000 xeraphins whatever rights the Company might have possessed over the estates on the island, under a reservation, however, of the quit-rent and (as is the better opinion), according to the ancient constitution of the island, of a claim to military service from the inhabitants. At the date of this Convention the greater portion of the property within the Fort belonged to private individuals, though all uncultivated lands and marshy grounds vested, by right, in the Crown. Subsequently, many of the estates in the island, particularly those belonging to the Jesuits and other Portuguese inhabitants who were found to be affected with treason, were forfeited to the Crown and devolved upon the Company; but no register showing the extent of the property thus confiscated is forthcoming. Then, in pursuance of the orders from the Court of Directors, to let all uncultivated land in Bombay out on rent, to invite settlers on the island, and to assign portions of lands to Gentoo soldiers for their maintenance, a considerable portion of Crown lands must have been alienated. On the other hand, as a result of the purchases and exchanges made from 1707 onwards, much of the private property within the Fort must have vested in the Company, though afterwards transferred to individuals. The tax levied in 1718 on

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every description of property in Bombay, which is said to have altered the very constitution of the island, commuted the military services reserved under Aungier's Convention. Two years after, the quit-rent was reduced to one-half its original amount, but extended to all houses within cannon-shot of the town walls. An additional quit-rent was imposed in 1731, but a distinction was drawn between English inhabitants and natives, for the former were required to pay a quit-rent of 6 reas per square yard, without paying any ground-rent whatever, while the latter had to pay not only the same amount of quit-rent, but a ground-rent of 5 reas as well. In 1733 a proclamation was issued by Government, fixing a limited period of forty-one years for leases, to be made renewable on payment of one year's rent, but it remained a dead-letter. Similar orders were promulgated, declaratory of the Company's right in the soil, but no steps were taken to enforce them, and the inhabitants continued in undisturbed possession of their estates. As regards foras lands, or salt batty grounds, it may be noted that they were once covered by the sea and reclaimed in the early part of the eighteenth century, thence becoming the property of the Company as grantees of the Crown. They were then let out for the purpose of cultivation at a very low quit-rent, the object being not merely the improvement of the soil, but the increase of the population of the island. People from the neighbourhood were cordially invited to settle on lands thus reclaimed, and the settlers were allowed not only to enjoy the produce but even to sell the benefit of the soil, subject to the payment of a small quit-rent. In course of time these immigrants built huts on the ground for themselves and their families, and even substantial structures. A benevolent Government allowed them this indulgence, not out of philanthropy merely, for they contributed to the prosperity of the island and increase of trade. Growing bolder, the tenants regarded these lands as their inheritance, and even sold them; in their instruments of sale and transfer they designated them as their hereditary property. Moreover, such property was permitted to descend from father to son, and taken in execution under process from the Mayor's Court for the payment of debts. At the end of the eighteenth century the Government of Bombay became alarmed at these encroachments on their rights, and threatened to put an im-

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mediate stop to them. The tenants protested, but in vain. As an amicable settlement could not be brought about, the matter was referred to the Recorder's Court in 1805, when the Company were judicially recognised as the legal proprietors of all salt batty grounds in Bombay. But it is worthy of note that, though Sir James Mackintosh declared the law to be with the Company, he evidently thought that both equity and justice were on the side of the tenants.

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CHAPTER XII

GLEANINGS FROM AN OLD RECORD

WE shall bring this volume to a close with a few gleanings from an old record we have come across during our search in the Record Room. On the top floor of the present High Court buildings there is a small winding staircase, by the side of the Assistant Commissioner's Office, which leads you to what may be appropriately called the Law's Lumber-room in Bombay. It is an unpretentious-looking apartment, on the top-most storey, situated in such an obscure corner that its very existence is known to but few. And yet it is a treasure-house more valuable to the historian and the antiquary than perhaps any other part of this noble structure. There the records lie, unrecognised and uncared-for, buried under thick layers of dust, eaten up, more or less, by the ubiquitous white ant. As you enter the room they seem to stare at you reproachfully, as if to complain that they have been neglected cruelly and that, in some measure, you are to blame for the neglect. Out of pity you gently remove the dust that has well-nigh suffocated them, and you find them open their eyes, dimmed with age, imploring to be rescued from the oblivion in which they have thus lain for full one century and the better part of another. The first thing you notice in the room is a pile of huge volumes lying on the floor in a state of utter confusion. They look like account-books, but a closer examination brings to light the fact that they are proceedings of the Mayor's Court. The history of the Mayor's Court, constituted by Royal Charter in September, 1726, but established in Bombay nearly two years after, is writ large in these volumes. They give the history of this Court from the very commencement, for the earliest Minute Book records the

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fact that the Court met in the Town Hall of Bombay on February 15, 1728, when William Henry Draper, Esquire, the first Mayor, opened the proceedings with a short congratulatory speech upon the honour done them, at the same time acquainting the Aldermen there assembled that a speedy and exact distribution of justice was required of them in return. Whether these Minute Books record the proceedings of the Mayor's Court from year to year till 1798, when it was superseded by the Recorder's Court, it is difficult to say with any degree of certainty. They are all lying huddled together, the later volumes burying the earlier ones, while a few of them are to be found in the larger Record Room on the first floor. The proceedings of the Recorder's Court are well arranged on shelves in this room, which contains many other important and ancient documents relating to litigants in Bombay of a bygone age. The most remarkable fact about these records is that, in spite of dust, damp, and destruction by white ants, not to mention long neglect, they have been preserved to us in fairly good condition. In some of the volumes the paper has crumbled to pieces, the ink has all but faded, and white ants have pierced through and through, from cover to cover; but, on the whole, time has dealt with them gently. One almost wishes these records had been indited on leaves—if that had been possible—as was done in Calicut a couple of centuries ago. Hamilton, describing the country of the Zamorin, and the religion, laws, and customs prevailing in it, says:

"They make use of no pens, ink and paper, but write on leaves of flags or reeds that grow in morasses by the sides of the rivers. They are generally about 18 inches long and one and a half broad, tapering at both ends, and a small hole at one end for a string to pass through. It is thicker than our royal paper and very tough. They write with the point of a bodkin made for that purpose, holding the leaf athwart their left thumb end over the foremost finger, and what they have to write is indented, or rather engraven into the leaf, but it does not pierce the leaf above half-way through. And on two or three of these leaves they'll write as much as we can on a sheet of small paper. All their records are written so on leaves, and they are strung and rolled up in a scroll, and hung some time in smoke, and then locked up in their cabinets. And I have seen some such leaves smoke-dried that, they told me, were above 1,000 years old." *

* *A New Account of the East Indies*, i. p. 318.

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The Minute Books of the Mayor's Court are not at all likely to last half that period. They are already betraying signs of decay, and in another century or so all that is left of them will be dust.

During our search in the smaller Record Room we picked up an innocent-looking volume, perhaps the thinnest of them all. There was nothing uncommon or uncanny about it. It was tinged yellow with age, and had a fringe around its border—the work of white ants. Being the earliest in point of time, dust had lain the thickest on it. On removing it, we found that it bore this simple title: "June, 1726, to January, 1727." This in itself was not illuminating, but the date attracted attention, for if the Mayor's Court was established in Bombay in February, 1728, this volume, we guessed, must contain the proceedings of the Court of Judicature which was in existence on the island even prior to that date. The conjecture proved correct, for on the very first page of the Minute Book we found the following inscription, written in bold characters:

"At a Court Present:
The Worshipll Jn° Hope, Esq.: Cheif Justice.
Mr. George Percivall, Mr. Henry Lowther.
Mr. Ephraim Bendall: Mr. Braddyll, at the Warehouse.
"Wednesday, May the 25th, 1726."

This Court must have been the direct descendant of the tribunal first established in Bombay by Gerald Aungier in 1670. It held its sittings both on the island of Bombay and at Mahim, and was the principal, or rather the only, Court of Judicature at the time. We searched for earlier records of this Court, but in vain; it will be equally fruitless to try and find out how this stray volume was smuggled into the Record Room, and got itself prematurely buried under the more imposing records of the Mayor's Court. With the object of scrutinising its fast fading contents, we removed the interloper from its place of intrusion. Then came the difficulty which we fondly hoped had ended. The effect of long neglect and damp was painfully evident. In trying even to turn over some of the pages, albeit very gently, they fell to pieces. The ink had also faded and the writing had become blurred in more than one place. There was, however, one redeem-

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ing feature about the record, namely, the remarkably good hand in which it is written from beginning to end. All honour to the Parbhu calligraphist—for, as we have already noticed, Perbes, or Parbhu clerks, were generally appointed for such work in the Courts of Judicature in those days—who must have written the Minute Book! That hand has ceased to write for nearly two centuries: but what it wrote in 1726 is as distinct to-day as if it were written only a few years ago. These proceedings must have been copied from rough notes probably taken by the Register—or as we now call this official, the Registrar—of the Court at the time of the hearing of the cases recorded in this volume. The clerk must have spent days in merely copying these notes from the original. He has been, on the whole, very careful, and the few mistakes that have crept in have been corrected by a different hand—perhaps the Register's. But for all practical purposes the record may be regarded as original. Certainly, the signatures of the Chief Justice and other justices, appended at the foot of each day's proceedings, are original. From these we find that the Worshipful John Hope wrote a fair hand, and never forgot to tack on to his signature the two distinguishing words "Ch. Just." The signature of Mr. John Braddyll, the Councillor who was responsible for the dismissal of the Rev. Mr. Cobbe, shows that he was a man of some education and culture, and that of Mr. Ephraim Bendall has peculiarities of its own. On the other hand, Mr. Henry Lowther was evidently no proficient in calligraphy, for his signature shows that he took no little pains is signing the proceedings of each day as legibly as befitted a member of the Court of Judicature. There is one signature we miss, that of Mr. George Percivall. He generally formed part of the tribunal, whether it met at the Warehouse or at Mahim, but he does not seem to have signed any of the proceedings in this record, and we confess our inability to assign any reason for it.

The Minute Book, as observed above, was lying in an obscure corner of the Record Room, buried under a heap of dust and *débris*, and at first we thought it had escaped the attention of all who might, at one time or other, have visited this room. But the searching eye of Mr. George Forrest does not seem to have missed it. In Appendix E. to the second volume of his *Selections*, giving extracts from the proceedings of the Court of

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Oyer and Terminer, he has cited two remarkable passages from this very record, typical of the mode of punishment prevailing in Bombay at the end of the eighteenth century. There are several other extracts in this appendix, but they are all gleaned from the proceedings of the Mayor's Court. Of the two passages cited by Mr. Forrest from the record under examination, and already noticed in an earlier chapter, one refers to the exemplary punishment awarded to a Portuguese soldier, named Ignatio de Liviera, who was convicted of robbery and attempt to murder, and was sentenced to receive thirty-nine lashes three several Court days, being tied to the gallows with a halter about his neck and a paper over his head denoting his crime, and was afterwards condemned to hard labour during pleasure, "being first marked with an iron in the cheek as a public testimony to the seriousness of his offence": the other concerns a Christian woman, named Joana, who was given only fifteen lashes for having returned to the island, although she was once banished from it with her husband—for no fault of hers save conniving at his evil practices—but upon this condition, that she returned no more, and if she did, then to suffer the full penalty ordered by the Government, namely, to lose one ear, and upon repeating the crime, both—the punishment for all women of ill-fame for returning after legal expulsion from the island. Both these instances find a place in this book in the chapter entitled "The Barbarity of the Age." But these two extracts alone do not make up the Minute Book of 1726–27. Mr. Forrest selected them probably because he was struck with the novelty and the barbarity displayed in the method and manner of punishing Joana and the wretched Liviera. He must have set apart an appendix with the object of showing the cruel modes of punishment obtaining in Bombay at the time. The record, however, is full of similar instances. Besides, there are several other matters referred to in its pages which lay outside the scope of Mr. Forrest's inquiry. But they fall within the purview of our examination, and we propose to notice them here, quoting largely from the record itself.

This chapter will, we trust, serve another useful purpose. It will throw light on the morals and manners of the people who inhabited the town and island of Bombay during the first quarter of the eighteenth century. Fryer and Hamilton have

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left us interesting and, on the whole, reliable accounts of the early administration of this city by a handful of Englishmen whose chief concern was the increase of trade. Picturesque as these accounts are, they lack what may be called the local colouring which alone can render the description of a place or a people lifelike. The Minute Book of the Court of Judicature will, we trust, supply this desideratum. It contains many curious illustrations not only of the manner in which justice was dispensed and criminals punished, but of the habits, customs, and even superstitions of the natives who had flocked into the island, drawn to it mainly by the beneficent rule of Gerald Aungier. The litigants were for the most part public or private servants of the Company and of their agents, or people connected with the shipping in the harbour. The Court was called upon to decide all kinds of cases. As Kaye has pointed out, it was at once a civil, a criminal, a military, and a prerogative court. It proceeded with remarkable promptitude and despatch, from the proving of a will to the trial of a murderer, from expending a vast amount of legal learning over the disputed possession of a shybar * to the settlement of a family dispute by the briefest appeal to common sense, from awarding a few lashes to a juvenile offender to despatching a violent soldier to the gallows with a halter round his neck or banishing a hardened criminal whom even the terror of the lash had failed to reform—from, in fact, deciding cases of the gravest importance to adjudicating upon a matter of which even the Head Karkun of the smallest village would disdain to take judicial notice to-day. Multifarious were the duties of the Court in those days, too numerous to recount here. It had to regulate the business of the "tinker, tailor, soldier, sailor"—and also we should add the baker! For, as we shall presently see, the Court had, on one occasion, to direct the clerk of the market to lower the weight of bread, on the bakers representing that the price of wheat prevailing at the time was too high; and, at another time, there being a general complaint against the exorbitant prices demanded by the "black" tailors of Bombay, the Court framed certain rules regulating their charges. But we must let the record speak for itself, in its own quaint style and spelling. For convenience' sake, we shall divide this chapter into three

* A kind of ship.

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sections, the first dealing with criminal, the second with civil, and the third with miscellaneous matters.

I. Criminal.

The very first entry in the record, dated Wednesday, May 25, 1726, when the Court met at the warehouse, presided over by the Worshipful John Hope as Chief Justice and assisted by Messrs. Percivall, Lowther, Bendall, and Braddyll as justices, runs as follows:

"Ottar and his wife Belldars accuse Jany and Jivan, mother and son, for robbing them of fiveteen rupees in silver, ten rupees pice, one small joy * for a child and a shaul: the wife says that the boy Jevan was that night at unseasonable hours several times at her house, and when asked what he wanted he made several frivolous excuses that he was troubled with the gripes and the like, that she being that night robbed could not but beleive he did it, in which she was confirmed by the mother's owning that she saw the shawl in her son's hands, who was then going to hide it. The boy denyes the fact, and the mother says the woman who is robbed taught her to accuse her son: this being improbable and the boy's going to the house that night being very suspicious, the Court order him twenty-one lashes in the publick Bazar and discharge the mother, she not seeming concerned, but continue the boy in prison till further order."

This was a reasonable order to pass, under the circumstances, though according to our modern notion of punishment the sentence seems to err on the side of severity, and the period of incarceration — "till further order" — is indefinite. At the present day, we do not send even the worst criminal to prison "till further order," any more than sentence him to be burnt on the cheek. As regards the lash, it was, as we have noticed elsewhere, the usual form of punishment in those days, and fell with the greatest impartiality on all offenders, old and young, male and female alike.

Here is the second entry on the same page:

"Shaik Ismale, Moor, accuses Callon for robbing him of two gold rupees and ten silver, with a hanckicher or cloth wherein they were tyed; it appears that it being Ramdam time they were all drinking together, and the plaintiff being very drunk, when he came to be sober

* A piece of jewellery.

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again, missed his money, and suspecting the defendant, who left the Comp[a] first, he looked for him and found the hanckicher or cloth about him and took it from him; it appears by witnesses that the hanckicher was found in his possession, which he owns, but says he does not know how he came by it, being very drunk, but denyes the money but offers to pay it by working for it: the hanckicher being found on him, the Court order him thirty-nine lashes in the publick bazar, and return to prison till further order."

We shall come across some curious names in this record. Shaik Ismale, the Moor or Mahomedan, needs no further introduction, and our modern Hindu friend Kallian is probably disguised in the word "Callon." It seems that Callon was again brought before the same tribunal on the next Court day, a week after.

"Callon, being at the barr and persisting in denying he ever had the money he stands charged w[th], the Court, considering the handkerchief wherein the money was tyed was found upon him, order that he work for the plaintiff till the whole be paid, and upon that condition discharged, paying his fees."

A very just order to make, to be sure! Next comes the following entry bearing the same date:

"Nag Patel, a Bandaree, having abused the Marine Serv[t] to the Clark of the Market in the execution of his office, seizing the said Nag Patel's toddy mixt with water, which he resisted and struck the Marine, the Court order him fiveteen lashes in the publick bazar and then discharge him paying his fine and fees."

The Bhandaris were, on the whole, a law-abiding people, and their services were highly valued by the English. Nag Patel must have been one of the black sheep in the flock. He was probably licensed to sell toddy, which he must have been in the habit of diluting with water—a practice much in favour even at the present day.

The last item in the proceedings of the day is also interesting. The case has been stated thus:

"A matmaker woman named Haly having violently assaulted another woman named Chiman and cut her in the head with a large knife used for cleaving wood, the wound proving dangerous and the woman a poor simple woman, the Court order that she be punished with twenty-one lashes in the publick bazar, pay for the cure, and then be discharged."

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The lash was no respecter of sex. More than a year after we find another woman punished with even greater severity. One of the passages in the proceedings dated November 22, 1727, runs as follows:

"Lacma, a fruit woman and an old offender, being four several times convicted of petty larcenys and now found guilty of robbing a child to the value of twenty-two rupees in jewels wch she obstinately denyes to discover, ordered 29 lashes in the publick bazar, and the same punish^{mt} during pleasure to be continued till she reveals where the s^{d} jewels are, and then after punish^{mt} to be banished off the Island. Madou, a goldsmith, charged wth receiving the s^{d} joys or at least dealing wth her previcating [prevaricating?] with the Court, and being an idle vagabond fellow, committed and ordered to be banished the Island."

But Joana's case, noticed elsewhere, was perhaps the most remarkable. It is thus recorded:

"Joanna, a Christian woman, the wife of Manuel Pereir, banished the ninth of March last past for several ill practices, with his s^{d} wife, being returned upon the Island without leave, the Registers being examined and it appearing that the woman was only sent off the Island with her husband without any crimes of hers specified save conniving at her husband's practices, the Court are willing for this time to favour her and only give her a small chastisement, fifteen lashes, but upon this condition, that she return no more; if she do, then to suffer the full penalty ordered by the government, to lose one ear, and upon repeating the crime, both: the punishment for all women of ill-fame for returning after legal expulsion from the island."

We hope Joana had occasion to lose neither of her ears.

The Court reassembled on Wednesday, June 8th, when the proceedings open with an account of the following trial:

"Mr. Miller, first Liev^{t} of the *Britania*, being robbed of a hand escritoire, and having reason to suspect Antonio Gomes, a Topass cook and his serv^{t} of the fact, he having the key of the room all the evening when the s^{d} escritoire was taken away; he being at the barr and charged therewith, denyes he knows anything of the matter and pleads that as there was two other servants who as well as he were in the house, went into the room that night, which he denyes he ever did, they must know what became of the escritoire and not he. The two moormeen serv^{ts} named Ballou and Fuckero being hereupon examined, acknowledge they were in the room at six a clock making their master's beds, the former, Mr. Miller's own serv^{t}, affirming he felt the escrutore with his feet when

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he made the bed, that it was there when he went away, when he left the key with the cook, who acknowledges he had it but denyes he went into the room. The Court having reason to think by these circumstances that it is amongst them, and Mr. Miller acquainting them that all his papers of consequence are in s[d] scrutore: in order to get the truth, if possible, from them, lay ten rupees penalty on each of the moormen, to be forgiven them if they confess, they accusing s[d] Gomes, and it appearing he was at home alone that night, and consequently had an opportunity for committing s[d] fact, besides standing charged with several times stealing from his master, arack, and the like, ordered for his said offences thirty-nine lashes in the bazar, to be in part remitted if he will own where the scrutore is, and not otherwise." *

Although the offence with which the prisoner stood charged on that occasion was not *proved*, still the Court awarded him thirty-nine lashes for his thieving propensities and shady antecedents. Master Gomes, however, made no confession, as probably he had none to make, for a few days after, the Court records that

"Antonio Gomes, servant to Mr. Miller, continuing obstinate, ordered thirty-nine lashes for his neglect, if not robbery, having the key of his master's room when the escritoire was lost, and in great probability be the thief, but not being sufficiently proved, he is after receiving his punishment ordered to be discharged paying his fees."

So that the unfortunate man was flogged, not because he was proved guilty of that particular theft, but because the Court was of opinion that in all probability he was the thief. Queer ideas the judges must have had in those days of the all-important principle of criminal law—prove a man's guilt before condemning him! As it turned out, however, Antonio Gomes was *not* the real culprit, but one Andrew D'Souza, who was afterwards severely punished. The latter stood charged with yet another offence which is noted in the record as follows:

"Mr. Boucher accuses Andrew D'Souza, his serv[t], of robbing him of money to the value of 40 rupees several times by opening a small

* In this connection it is interesting to recall the fact, noted in another chapter, that when a Mr. Jenkinson's escritoire had been robbed of fifteen guineas by his slave-boy with the connivance of his horsekeeper, the wretched Alexander and Fakir Rao were both sentenced to be hanged. In comparison with this Antonio Gomes was punished with surprising leniency, but the motive of this may have been to recover the papers if possible.

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escritoire with a small nail, beside a pair of gilt buckells and gold buttons which were found upon him; he acknowledges the theft, makes the common excuse of being drunk and not being himself and the like, but being an old offender, the Court order him two years' confinement at the breach, thirty-nine lashes three several Court days; and the goldsmith, named Shama, for receiving the stolen buttons and lending mony thereon, contrary to the repeated orders of Government against bying or receiving any gold or the like of servants, fined twenty-five rupees towards making good Mr. Boucher's loss, and thereupon being severely reprimanded, discharged."

The goldsmith figures more than once in this record. This class of men must have emigrated from Gujarat and settled down in Bombay during Aungier's administration, contributing not a little to the prosperity of the island by their industry and integrity; but during the period of decadence that set in there at the end of the eighteenth century, they probably fell considerably in the estimation of their rulers. For at the time of which this record speaks, we find several of them hauled up and punished for receiving stolen property. For instance, here is a case in point:

"Hiree, sentenced last Court day for stealing some joys having since confessed that she stole them and sold them to Narran Goldsmith, he confessing the fact and acknowledgeing he knew the orders of Court not to receive any gold or silver joys from any suspicious persons but what Ragoosett approved, but did not apply to Ragoosett because, as he says, there is a quarrell between them, which being looked upon as very frivolous and he being an old offender as well as tricking the party, cheating him of half the amount, besides disobedience to orders which he acknowledges he was acquainted with, ordered that he receive thirty-nine lashes in the publick bazar, paying the difference of what gold is missing to the parties injured, and then discharged paying his fees."

Goldsmith Raghuset must have commanded considerable influence in Bombay at the time. That he enjoyed the confidence of Government is made abundantly clear by the following entry dated March 15, 1726:

"Ragouset accuses Vittul Goldsmith of a fraud committed by vending silver cased with gold in stead of pure gold, producing the very peice; this being confessed, tho' with this paliation that his servant made it and not he; but he having endeavoured to stop the complaint of Ragouset, paying him the value of the damage, the Court fine the Goldsmith

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20 Rupees and upon Ragouset's request order that all new [?] goldsmiths in future shall upon Ragouset acquainting the Court be obliged to give security to Ragouset or the Court before they be permitted to work," &c.

In one of the foregoing chapters we have examined some of the principal causes that arrested the progress of Bombay during the last quarter of the seventeenth and first of the eighteenth century. Therein we have cited a few instances showing the extent of demoralisation from which the inhabitants of the island suffered at the time. By way of supplementing these and substantiating what we have said in the previous chapter, we reproduce below a few extracts from the record, which will bring before our eyes the picture of that dark period more vividly still.

"Caiton D'Mell, a Cofferee, accused of assaulting and robbing a woman on the highway, knocking her down and taking a gold joy out of her ear, being convicted of the same, he impudently saying in his excuse that his design was only to lye with her, pleading it to be the practice of the Cofferees at Bassein; for this his crime and impudence in Court condemned to receive thirty-nine lashes on three several days, and to be marked with a red-hot iron, then to hard labour at the Breach during pleasure."

"Kitono d'Mello keeping a disorderly house and living by it and being a publick nuisance to the neighbourhood both by that and giving abusive and ill language to them, condemned to receive forty-nine lashes and then banished the Island."

"Francisca Pereira *alias* Pot Pot, Midwife, accuses her slave-boy, Joseph, of robbing her of several summs of money, parcels of goods, &c., and charges Esperanca, a Christian woman, with being the receiver and encourager of her Coffree slave to rob and murder her; the evidence is the confession of the slave and the testimony of Gonsalvo D'Pereira, in whose house the Christian woman lodges, who declares that he has frequently seen s[d] Coffree bring parcells of money, victuals and several other things, and that the Coffree was tempted to these practices by the woman prostituting herself to him. The prisoner being a notorious woman and of ill-fame, ordered she be tyed up with the slave Coffree three several market days, she to receive fifteen lashes each time and he thirty-nine and then sent to the Breach to hard labour till his mistress can dispose of him as she requests: and the woman immediately turned off the Island and what money is in the Paymaster's hands due to her husband till this time, Mr. Henry Lowther is desired to stop and secure towards payment of what is stole."

"Caron Tuckar, being accused of several robberys and particularly

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convicted of robbing Pillai, a woman, of copper-pots, some joys and other things, all which he confesses but says he was drunk, he appearing a very notorious offender and living by the practice, ordered three several whippings in the publick Bazar, thirty-nine lashes each time, and then sent to the Breach to hard labour during pleasure."

"Padre Alexander as a physician sues Michael Rasor for a cure performed on him and his wife in a virulent venerial case; the summ he charges for physick without advice or attendance amounts to sixty-five rupees for his wife and fifty-two three quarters for himself, in all one hundred seventeen rupees three quarters. The Court, receiving with indignation people of such character and who have the impudence to avow their crimes in Court and then refuse payment and trouble the Court, order that Michael Rasor give immediate security for payment of the amount, and give him due caution how he behaves for the future."

"Madou Pilset being convicted of subornation on having offer'd to accuse two innocent persons for a sum of money, and upon receipt of the money having signed a false information, all which upon being confronted he confesseth, and produces the very money received on this acc^{t} in Court, the Court for so heinous an offence condemn him to stand to-morrow in the Pillory from the houre of eight till nine, then to receive fifty lashes and recommitted to prison during the pleasure of the Court."

"Abdulla Moorman committed on suspicion of attempting to rob a dancing wench; upon the evidence it only appearing an act of drunkenness, but it being his frequent practice and leading a disorderly life with the said woman, ordered twenty-one lashes and discharged on paying his fees."

"Domingo Roderigues, a soldier inhabitant of Mahim, accuses Mackbull, a lascar, of breaking into his house in the night and robbing him of one broken silver chain, two silver rings for the leggs, and five copper potts. The prisoner confessing the fact and being an old and notorious offender, the Court condemn him to receive thirty-nine lashes three several market days, being the three several Thursdays following the fourth, to be branded with a red hot iron, and then to be sent to the breach to hard labour during pleasure, and order the stolen goods to be restored to the prosecutor."

"Bonna Limjee on behalf of a Persee widow complains of her slave-boy, Govind, for neglecting his duty, refusing to obey her commands, and frequently absenting himself from her service, to which he adds that examining his box he found some silver which he owns, declairing it to be his mother's and which they charge him with stealing, the boy only saying he found the same: but not proving it, and the parties desiring he may be punished by whipping and working some time at the Breach, the Court order him thirty-nine lashes and then to be sent to the Breach to hard labour for three months and then to be returned to his mistress."

"Joseph Antonio D'Fonseca D'Marsellas E'Mello being accused of several insults offered to some Banians, inhabitants of this island, extorting money from them and threatening them wth death by stabbing

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them wth a knife which he carried about him for that purpose, to the great terror of the subjects of this Island; the several persons who accuse him are Amboidas Tuckidas, Ransor Comatee, Bica Sinai and Babou Shroff, creditable merchants whom he has particularly abused, especially Babou Shroff, from whom he forced five rupees: this wth several other enormitys being related of him and enquiry being made into his character, the Court finding him to be a scoundrell vagabond, an impostor and cheat, direct that he be punished in the most publick manner by receiving thirty-nine lashes under the pillory and then be banished off the Island in the first boat bound to the Portuguese country."

"Chandoo Ram, Makusett Manikbhut and Pilla Weaver, inhabitants of this island, being convicted of unlawfully assembling together to game in the house of Budombhut, a Brahmini, who entertain'd them for the purpose, humbly petitioning the Court, begging pardon and pleading poverty, were severely [severally?] fin'd but three rupees each and Budombhut five for entertaining them and then discharged."

"Domingo Carneiro, an idle vagabond fellow and bound over to his good behaviour, having severall fresh complaints prefered against him, viz., for keeping a disorderly gaming house, quareling and abusing his neighbours and the like bad practices, is sentenced to receive thirty-nine lashes in the publick bazar and then banished off the Island."

"Parlada, a Banksalee, charged with associating with the aforesaid Carneiro, neglecting his business gaming, and thereby not only loosing his time but his money and consequently disableing himself from answering the severall demands of the merchants who supply the shop-keepers with goods, for an example to others, ordered eleven lashes in the publick bazar and then discharged."

"Luckshee Lockra accused Somno of breaking open his house and robbing him of two joys belonging to his child; he denyes the fact as to the robbery but makes the common excuse for his going into the house that he had been drinking; it appears that the mother of the child being alarmed when he came into the house, made an outcry, and the fellow running away, the rounds* coming that way persued him into a house where two stone-cutters named Bogajee and Salvajee lived, who refused to deliver him up, declaring they would die first, but the rounds sending for more people to assist them, they then fled and the prisoner was taken. The prisoner for his offence in breaking open the house is condemned to work at the Breach six months, after

* The rounds, it will be remembered, were first appointed in Bombay in 1694, when Sir John Gayer was Governor. On September 13, 1694, the following order was issued to the Subhedars of the different districts of the island: "Being informed that certain ill people on this island go about in the night to the number of ten or twelve or more, designing some mischief or disturbance to the inhabitants, these are to enorder you to go the rounds every night with twenty men at all places which you think most suitable to intercept such persons. If you meet any of them, these are to empower you to bring them perforce or otherwise to this Castle."

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having re^{d} thirty-nine lashes in the publick bazar: Bogajee and Salvajee for their offence having received a very severe reprimand were released paying their fees."

These extracts will suffice to show that there was considerable room for improvement in the morals and manners of Bombay at the date of this record.

In the chapter headed "The Barbarity of the Age," we have noticed the trial of an innocent woman named Bastok, who was found guilty of witchcraft and other diabolical practices and sentenced to receive eleven lashes at the door of the Cathedral. "Black Art" was practised in Bombay freely, in spite of the fact that the authorities took stern measures to suppress it, and punished its professors with some severity. Superstition and ignorance were rampant in those days, and not only did the uninitiated among the natives believe in the science of magic, but those who practised it had absolute faith in their own power to invoke the wrath of the Evil Eye. Bastok was not the last person to suffer corporal punishment for witchcraft. There are at least two trials described in the record under examination which show that Chief Justice John Hope and his colleagues regarded this practice with undisguised horror and severely punished the culprits. We reproduce below the proceedings of one of these trials:

"Domingo Rodrigues, a Christian soldier, being accused of performing some of those idolatrous practices in use among the Jentues, being a sacrifice of rice, &c., matters to some infernal power to deprecate his wrath against a poor sick woman then inhabiting in the said Domingo Roderigue's house, he confessing the act, pleading ignorance and begging pardon, the Court, in consideration of his ignorance and present penitence, order that he only receive 39 lashes at the Portuguese Church door on the Fryday following during the celebration of Mass and that then he be delivered to the Padre to be instructed and to suffer their customary church discipline as limited by the Laws and Rules of this Government."

It may be added that, in spite of these deterrent sentences, "Black Art" flourished long in Bombay, known by different names at different times, such as witchcraft, sorcery, fascination, &c. Such was the blind faith of some of these misguided persons who professed to believe in it that, even at the risk of

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forfeiting their lives, they confessed to the truth of the charges brought against them.* In the middle of the eighteenth century the offence known as "fascination" † became so common in Bombay that the Government had to interfere, and in their zeal to end the practice rather than mend it, they issued a proclamation not only declaring that they would severely punish all persons found guilty of "fascination," but also offering rewards for the detection of the offence. The result was that the power and importance of the so-called "magicians" was thereby increased, and the natives brought many false complaints against their personal enemies charging them with "fascination." Curious as it may sound, it was not only the ignorant natives who were imposed upon by such practices, but even Englishmen, some of them in very high position, fell victims to the charms of the sorcerer. Indeed, it is said of Thomas Hodges, Governor of Bombay between 1767 and 1771, that he was so completely under the influence of a Brahmin sorcerer that he consulted him on almost all affairs, public as well as private.

The picture which Fryer has left us of the morals and manners of Bombay during the last quarter of the seventeenth century is by no means overdrawn. If we are to believe the records, the morals of the people were worse even than their manners. The establishment of the Mayor's Court, nearly half a century after, marked no appreciable improvement in the morality of the place. Not that the Government were remiss in the performance of their duty (as they understood it) in this respect. On the contrary, all breaches of law and morality were punished with the utmost severity, and the poor results obtained are fair material for the humanitarian argument that indiscriminate harshness does not remedy crime. The Court of Judicature would on no account tolerate an offence of grave misconduct, and it lost no opportunity of impressing upon the inhabitants the necessity of conducting themselves as all good citizens should. There are at least two cases in this

* This was also often the case in England, the explanation advanced being that the general sentiment was such that a person plausibly accused of sorcery would, even if acquitted, find his life a burden to him.

† "Fascination" meant bewitchment. The word is probably derived from *fascinum*, the obscene amulet which Roman women wore round their necks to ward off the evil eye.

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record testifying to the solicitude the judges always evinced for the morals and manners of Bombay. The first of these reads more like a scene from a comedy, and is, indeed, almost word for word anticipated in "Don Quixote," though it ended tragically enough, at least for the offender. The entry runs as follows:

"Sommo accuses Ibrem of coming into his house by night with an intention of robbing him: it appears that Sommo in the night hearing a noise in his house got up and called for a light, which being come, he and his son searched the house and found the said Ibrem concealed in a loft; he in his defence pleads that it was true he was in the house, but not with the intention of robbing; says he had kept company with a woman in the house for two years last past, that passing by that night she called him in, and that he remained with her till, the house being alarmed at some noise they made, she perswaded him to hide himself there till the search was over; but that they suspecting something, came into the place where he was, when they beat him very much; this being the truth of the fact, the Court to discourage such practices for the future order Ibrem thirty-nine lashes in the publick bazar and then discharge him, paying his fees, having given assurances of his good behaviour for the future."

The course of true love never did run smooth; but that of false love is almost invariably rough, and brings the participants into endless trouble! The Court, while passing what in its opinion was a mild sentence, had probably taken into consideration the beating Ibrem had already received at the hands of Sommo and his son up in the loft. The facts of the other case are thus stated:

"Pasqual D'Silva keeping company with a leud woman, one Anna D'Souza, and they giving great disturbance to their neighbours by their mutual disorders and quarells and they having the impudence to avow and defend this kind of life in the face of the Court, it is ordered that they severaly receive thirty-nine lashes in the publick bazar and then be banished off the Island. Pasq[ll] D'Silva being related to several persons on the island who bear a good character, at their intercession the Court is pleased to remit the corp[ll] punishment and to accept of a fine of twenty-five rupees offered in his behalf, but order that he immediately leave the Island and return from whence he came."

Not only were acts of misconduct visited with exemplary punishment, but even foul words had to be atoned for in the

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public bazar. For instance, when one Mangjee charged Tatia, a Moorman, with slandering his wife, and when the accused was found guilty, the following order was recorded :

"The Court tell him that for the liberty he has taken of defaming a woman without any cause and being an idle fellow, to warn him from any future ill-behaviour of this kind, they order him nineteen lashes in the publick market-place, then to be discharged paying his fees."

It may be added here that in the case of all old and incorrigible offenders, or those whose crime was of so heinous a nature that corporal punishment was considered inadequate, the Court generally ordered their banishment from the island. Such criminals were, as a rule, despatched to Portuguese territory, perhaps to Bandora or Bassein. Whether the Governor's sanction was always required to give effect to such an order does not clearly appear from the record. When, however, one Manuell Pereir, a soldier, and his wife were found guilty of fraudulent practices, the Court ordered that they should be turned off the island, "leave being first obtained of the Governor for so doing."

The Mint in Bombay was a source of great temptation to those who were employed in coining money there. It had been established on the island as early as 1670, when Aungier was at the head of Government, and the earliest Bombay coins known at the present day are said to be those which were struck in this Mint in 1675. In 1681 one Mr. Smith was sent out from England as Assay-Master on a salary of £60 per annum. But there was no uniformity of currency at the time, as the Company's coins were only one of the many varieties then in circulation. Moreover, as no two coins had in them the same proportion of alloy, the native money-changers had abundant opportunities of imposing upon the people. An order was, therefore, published, requiring all persons who had more than ten foreign rupees to bring them to be re-coined at the Mint, or give notice to the Custom-Master within three days that they intended to export them; otherwise, their money was to be forfeited, if discovered. In spite of these precautions, however, offences against coinage increased. Those who were employed at the Mint were often found guilty of stealing the coins or the materials of which they

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were made. Two such cases have been recorded in the proceedings of the Court dated October 11, 1727.

"Vissa Ram and Pandoo, Coppersmiths, being employed to make rupees in the Mint and taking liberty to make use of s[d] money to the value of one hundred and twenty rupees without leave or acquainting the Mint Master, ordered thirty-nine lashes each in the publick bazar and continued in prison till satisfaction be made to Ragouset for the whole summ wanting and then sent off the Island."

"Pillmatra accused of stealing seven dollars out of the Mint, first five and then two, both which he confesses, and being an old offender, the Court order that in the first place he pay Ragouset seven dollars for which his house and effects are to be answerable, and then to receive thirty-nine lashes at the Mint and thence to be conveyed to hard labour at the Breach for the space of two months. Nagoo Patel being the receiver and concealer of the theft and a confederate with, ordered the same punish[mt] at the Mint, and then to accompany him to the Breach, there to work for two months."

It will be observed that in both these cases Ragouset, the goldsmith, already referred to above, plays some part. He was then known as the Mint Goldsmith, and must have superintended the work of the other goldsmiths employed at the same place. It seems that Ragouset had a nephew, named Gopal, who was brought into trouble by some men working in the Mint, and who, but for the influence of his uncle, might have shared the lash with them. Though the extract relating to this affair is lengthy, it is, we think, sufficiently interesting to deserve a place in this chapter.

"Raghusett Muckonsett, Mint Goldsmith, in a petition to the Court sets forth that on the 25th of last month he observing a Tavisa or Talisman in his nephew Gopall's turbett and enquiring where he got it, he told him that one Herojee, a Seapoy, belonging to the Mint, had given it him together wth a particular piece of root w[ch] he pretended would add, while he wore them, to his skill and credit in the world; this giving the petitioner some suspicion, he further strictly examin'd his nephew, who then confest that he was privy to the s[d] Herojee's taking some dollars out of the Mint, and that Rama Sevant, a Seapoy, was also concern'd. His s[d] nephew also intimat[d] that he knew where the money was. He sent his son Luckman wth him to the house of Rama, who upon the s[d] Luckman's demand deliver'd him twenty-four dollars and ten rupees, when proceeding to the house of Herojee he deliver'd him twenty dollars more w[ch] he had in his custody, upon w[ch] taxing his nephew wth con-

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cealing this fact, he reply'd that ever since he re^{cd} the Tallisman from Herojee, he had been out of his senses and knew not what he did. The party concern'd attending and a strict enquirey made into the affair it appears that the s^{d} Gopaul being employ'd in the Mint under his Unckle, took the afores^{d} money and deliver'd the abovemention'd Rama and Herojee, Sepoys, then likewise employ'd in the Mint, to carry home and keep for him, wch they readily did from the hopes they had of a great share for the concealment; it appears also that some plates of silver were carry'd out, but upon some apprehensions againe restor'd to their proper place; Gopaul also charges Kidow, a goldsmith, of receiving some dollars from him to exchange for rupees, wch the s^{d} Kidow acknowledges and says that upon some suspicion that he had, he that night went and acquainted Sirputt, another goldsmith belonging to the Mint, therewith, from thence arose the enquiry; the prisoners being heard in their own defence, Gopaul only makes the premention'd frivolous excuse of his being out of his senses, that he was very young and did not know what he did, the contrary of wch appears and no regaurd had to it; Herojee and Rama plead that they only took the money as he gave it them to keep for him, and not knowing as he was Ragoosett's nephew, it might be his own or in his power to make use of it, to wch they were told that as they being employ'd in trust in the Mint knew very well no money was carried from thence but what Ragoosett directed, not privately but in a public manner, neither would he have lodged it in their houses but sent it to his own, and consequently what they alleged for themselves was a sorry excuse; besides what Herojee design'd appear'd too plainly by imposeing the Tallisman on Gopaul, wch was only to perswade him to the fact, as if thereby it might be conceal'd. They having nothing to gainsay to this, the Court proceeded to sentence them, but Ragoosett and his relations interposeing in behalf of Gopaul and urging that the money was all recover'd and that he the s^{d} Ragoosett was liable to any loss ariseing in the Mint, and that he would be security for the young fellow's behaviour in future, and begging the clemency of the Court in regaurd to his own character, and the service he has done to the Hon'ble Company all his life-time, it is after some debate agreed that the s^{d} Gopaul be fin'd one hundred rupees and to remitt his corporal punish^{mt} and be releas'd from prison paying his fees. Herojee and Rama for their offence to receive thirty-nine lashes two several Court days, then sent to the breach to work a year and a day, and Kidow the goldsmith, at the intercession of Sirputt goldsmith, he having contributed in a great measure to the discovery, being first severely reprimanded, is discharg'd, paying his fees."

But for the fact that he was closely related to a man of wealth and influence like Ragouset, the premier goldsmith of Bombay, Gopal would have shared the fate which befell his confederates, Herojee and Rama. There was something in a

name, after all, even in those days; and there was then much more in Ragouset's name than meets the eye to-day.

Though the Court was most expeditious in disposing of the cases brought before it, it did not decide important matters without mature deliberation. When it found, for instance, that the indictment against Henrique D'Sylva, who was accused of having caused the death of his wife by kicking her, somewhat defective, it remanded the case for fuller information. Nor did it convict him of murder merely because the commission of the capital offence was alleged against him or because the circumstances were highly suspicious. The trial of Sylva is thus recorded in the Minute Book:

"Henrique D'Sylva being sett to the Barr and nobody appearing to accuse him, he was told that his wife dying suddenly after he had kicked her, he stood charged with being the cause of her death, and therefore was now to answer thereto: he says that having some companions with him at his own house, his wife being then at her father's, where he had left her, she returning soon after him, he was angry with her for coming home at that time and not staying where she was, that some words passing, thereupon, he in his passion, being at the same time in drink, gave her a kick, upon which she making a bobery or noise and it being tolerable late, he went away and slept with the guard at the Town Gate; that in the morning coming home he found his wife dead to his great surprise, and knows nothing further of the matter."

The parents of the deceased were summoned to give evidence in the case. They, however, corroborated the story told by the accused, giving him a general good character for his behaviour towards his wife, and adding that they had no reason to think the prisoner would voluntarily be guilty of such a heinous offence. The Court thereupon passed the following order:

"The Court taking the premises into consideration and the matter being truly stated and debated, unanimously agree, the black justices giving their opinion first, that this case does not come up to willful murder, but in all probability an unfortunate accident, and consequently they find it no more than chance medley, and acquit him accordingly of the murder; but it being proposed, for example's sake, and to be a check upon him and others for the future from getting drunk, &c., to give him some corporal punishment, it was agreed to and he ordered thirty-nine lashes in the publick bazar and then discharged, paying his fees."

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Who were the "black justices" referred to in the above extract? They certainly could not have formed an integral part of the tribunal, for their names do not occur at the commencement of the proceedings for each day together with those of the other judges. They were probably some respectable native inhabitants who were asked to help the Court in its deliberations or enlighten its members on points which were beyond their knowledge, such as the manners and customs of the various peoples then inhabiting the island of Bombay. They may have occupied at the time a position somewhat similar to that which the Assessors fill to-day in the Mofussil. They were known as *black* justices to distinguish them, we suppose, from their *white* colleagues on the Bench. The native magistrates and judges would strongly object nowadays to their being styled "black justices," but in those days the phrase implied no contempt. It may be added that this objectionable epithet "black" was long applied to natives in several official documents, and, as Mill indignantly observes elsewhere, even Sir Elijah Impey could find no better title for the native magistrates and judges in India than that of "black agents."

Though lawlessness reigned supreme in Bombay during the first quarter of the eighteenth century, there were few cases of capital offence, such as murder or manslaughter. In the record under examination, which covers a period of nearly two years, we come across only one such case, that of a Bhandaree stabbing another under grave and sudden provocation. The facts are stated thus:

"The Register informing the Court that on Monday last being between the hours of twelve and one, he had notice given him that one Bandaree had stabbed another, and that the criminal was fled; whereupon, sending for Mr. Jn° Man, one of the Surgeons of the Hospital, before the s^d^ Surgeon could arrive he had further notice the man was dead; on which he and the s^d^ Surgeon went to view the body and found him removed to his own house dead, with a large wound in his breast, and wch the s^d^ Surgeon declared was the occasion of his death: that he had examined all the neighbours but could not find any who would or could give him any acc^t^, the wife of the criminal excepted, who gave him the following declaration: She says her name is Lacmy and her husband's name Bapoo and that he is a Bandaree, and that she has been married to him about two years: that she very well knew Bickoo, the deceased Bandaree, they being neighbours when children; that the dec^d^ came to their house

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on Monday last being July thirty-first, and her husband being then at home he smoaked some tobacco with him; that her husband then going to the Town Hall to have his measures stamped, the s[d] Bickoo sent a boy he had then with him to buy some tobacco; that he then came into the house and set himself down upon a cott, that she then going into the cookroom, he followed her and catching hold of her threw her down upon the ground and offered violence to her; that she crying out, her husband came in the interim, when Bickoo got up into a corner, from whence the husband pulling him, they had a strugle together, upon w[ch] her husband took his Kittarre or dagger, upon w[ch] she interposing had her finger cut; that immediately after her husband stabbed the s[d] Bickoo, who making great noise ran away out of the house and her husband after him, and this is all she knows. All w[ch] she now repeats in substance upon oath in Court."

Two neighbours were also examined by the Court; they swore they heard no noise whatever, and as regards the character of Lacmy, who was placed at the bar, "they knew not what character the woman hath, nor ever took notice of the persons that frequented her house, they being of another cast." But the wife, mother, and other relations of the deceased did not allege anything against the woman or her husband (who had discreetly run away), except that the latter had kicked Bhicoo, though how or why they knew not. Thereupon the following order was recorded:

"The Court, taking the whole into consideration, find that Bickoo must have been rude to or with the woman and which occasioned his death by the husband, but it does not appear to them as yet that she is a bad woman or any way encouraged it, and therefore at her request admit her to bail; and Essa Naique,* Muckadum of the Bandarees, is directed to take her under his charge, he giving security for her appearance."

Whether Lacmy was again placed before the Court, and whether her husband was afterwards found and lashed out of the world, there are no means of ascertaining.

If the Court was jealous of the honour of the town, it was no less anxious to enforce discipline. Disobedience on the part of inferior servants was visited with severe punishment. For

* Essa Naique was the Muccadum or leader of Bhandaris in Bombay to whom Government had rented, in 1733, about four hundred cocoanut-trees belonging to the Honourable Company for the term of seven years, at a certain yearly rent for each tree.

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instance, when one Goverous Serrang accused Bhica *alias* Ismaljee, a sepoy, of having assaulted him, in the river of Goa, with a drawn sword without any provocation, and cut him in the arm,

"whereby he is therein disabled, besides the expence of the cure being one hundred and fifty Xer[as], for which he prays the Court will doe him justice on the criminal," the Court, "for an example to others and to deter them from the like practices and for a security to the trade of the island, which must be in consequence prejudiced if the inferior people are allowed to insult their officers and particularly such a flagrant act be not severely punished, orders that the prisoner receive thirty-nine lashes three several market days, be then burnt in the cheek and then condemned to hard labour at the breach during pleasure."

Enough has been quoted from the record to show that the justice which the Court dispensed in those days fell far below our ideal of the present day. The guilty were punished with undue severity, and sometimes even the innocent were condemned without a fair trial. But the judges were human after all, and if the justice which they administered was swift, it was not always unmixed with mercy. For instance, when one Denis Henriques, a prisoner at the breach, petitioned the Court to be released from his long confinement, and his wife setting forth the lamentable condition to which she and her family had been reduced for want of subsistence, the Court ordered him to be released, the Governor's consent having been first obtained. And again, when one Caron Tacur, a Columbee (Kunbi) or farmer, petitioned the Court for mercy on himself and his wife and children, who were on the point of starvation, promising to amend his conduct and maintain his family by honest labour, "the Court, in consideration that Columbees are wanting upon the island, his poor wife and children, and his penitence for his crimes, remit the last part of his punishment, being to goe to the Breach, and after receiving his chastisement to-morrow, order him to be discharged."

We have already cited cases in which Coffres or Zanzibar slaves were charged with the commission of various offences. It may be mentioned in this connection that slaves were amongst the exports of the English factory at Surat, as elsewhere. The Portuguese probably traded in this species of live-stock, and it is a significant fact to note that even under English rule the un-Christian traffic in human beings continued almost up to the

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beginning of the last century.* Several of the English inhabitants in Bombay owned slaves, but their lot was far happier than that of their African brethren in the West Indies. In this land of freedom they were treated more like servants than slaves. Sometimes they were trained up as soldiers. The importation of Coffres was a source of constant anxiety to Government. Special regulations had to be framed from time to time for the conduct and treatment of slaves; as, for example, in 1753 it was ordered that "they be treated with the greatest humanity, carefully instructed in their respective professions, and on no account whatever be made either servants or drudges." The influx of wealthy people into Bombay resulted in a large increase of slaves, and even as late as 1780 there were no fewer than 431 slaves resident on the island, 189 of whom belonged to Bombay proper, and the remainder to the district of Mahim.† The task of converting these semi-civilised people into peaceful and law-abiding citizens was one of considerable difficulty. Their masters could not repose trust in them, for the Coffres were addicted to the vice of stealing, and had the reputation of being smart thieves. Hence we find the record replete with cases of petty larcenies committed by them. We shall content ourselves by citing only two cases:

"Ensign Parrat accuses his slave boy Cesar of robbing him on Thursday the 9th Instant of a summ of money amounting to two hundred rupees or thereabouts with some wearring apparell and some other small things. He declares that being upon the Battery Guard, he sent his boy home upon some service, he staying long Mr. Parrat beat him, upon which he ran away, when suspecting him, he sent to enquire about his room and had a report made him that it was open and that it appeared he was robbed; upon enquiring further he found by a centinal near his room that Lewis Pereir, a soldier, had been in his room with the said boy, for which he afterwards absconded and was found in a Bandaree's house, now a prisoner; the said Lewis Pereere, after he was taken, returned him six crown pieces and some other things which was part of what Mr. Parrat was robbed off; he therefore accuses him as a confederate with the boy and the Bandaree for conceeling, both knowing they had robbed him. Lewis Perere and the boy confesing the crime, the Court think it needless to examine the evidence but proceed to judg-

* In a letter dated December 31, 1804, an English skipper, named W. Clarke, writes from Goa: "Insure Rs. 9,000 on 91 Coffres from Goa to Colombo. They are very fine fellows, and you will doubtless be highly pleased with the transaction."

† Edwardes' *The Rise of Bombay*, p. 208.

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ment, and accordingly sentence the said Lewis Perere for the robbery, seducing the boy, and his former vile and scandalous behaviour to receive three several market-days 39 lashes in the publick bazar, be then burnt in the cheek and then sent to the Breach to work during pleasure; the boy Cesar 15 lashes the same three days and at his master's request to be returned to him; and the Bandaree named Gondojee Jacojee appearing to have conceal'd these persons in his house, when he must know they had robbed somebody by having Europe goods and money with them and not acquainting some proper persons therewith, besides the charge the boy exhibits against him of receiving ten rupees from the soldier, ordered 39 lashes in the publick market-place and then discharged paying his fees."

The other case is stated as follows:—

"Mr. Percivall acquainting the Court that two slave wenches of his attended with an accusation against two prisoners committed by him, they were called in, who charge Babou Can, Moor Seapoy; being called upon to answer, confesses he rec^{d} two rupees from one of them named Daphne to buy sweetmeats and some toys, but that he did not know that it was stole, to wch it is answered that he being a seapoy in the house and in trust he has thereby aggravated his crime to the highest degree, he knowing and every child upon the Island the orders of the government in such cases, that not even a trifle is rec^{d} from slaves without acquainting their masters, that therefore he must suffer the punishment in such cases, which is whipping three several times thirty-nine lashes each, once at Mahim and twice under the gallows, and condemned to hard labour at the breach during pleasure; they likewise charging a soldier with receiv^{g} some cloathes, named Joseph D'Remade, wch he denyes, there being no other evidence, the Court discharge him and free him from his recognisance. The two wenches at the request of Mr. Percivall to receive thirty-nine lashes each immediately in the publick bazar and then sent to their master's house at Mahim."

We must now bring the first part of this chapter to a close. There remain to be noticed, however, trials of criminals who were convicted of capital offences, such as treason, murder, rape, and the like. In such cases, as has been observed elsewhere, the Court of Judicature, after recording the evidence, submitted the proceedings of the trial to the Governor and Council for consideration of the sentence. It should be remembered that the Governor and Council constituted the Supreme Court of Judicature, and it was probably in their capacity as such that criminals found guilty of the more serious offences were handed over to the higher authorities for whatever orders they deemed

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necessary to pass. In a chapter dealing with some interesting trials in Bombay, we have referred to the case of Stanmore and Richardson. There are two or three similar trials in this record, the proceedings in which were submitted to the Governor. It will be interesting to notice here at least one of them. The trial opens as follows:

"*To the Hon'ble Willm Phipps, Esq., Presid^t & Govr of His Majesty's Castle & Island, Bombay, &c., &c., Councill.*

"At a Court held on the 14th and by adjournment on the 21st of this Instant Decem^r, Ignacio D'Livera, a foot-soldier in Major Jonathan Stanton's Company, being tryed for an assault and robbery committed on the body of one Gopall, a young boy of nine years of age or thereabouts, the fact appearing very black, and attended wth extraordinary circumstances of barbarity and cruelty, liberty is taken to lay the case before your Hon^r &c., and to beg your judgement on this criminal.

"The prisoner being brought to the Barr, and in due form indicted, to wch after it was duly explained to him, he pleaded not guilty, the Court thereupon called the evidence, who relate as follows:

"Gopall, the boy mentioned in the indictm^t, says that he is about nine years of age, the son of Namajee Trumpeter, belonging to Fakroo Subadar's Comp^a, an inhabitant of this Island living in Dungaree. That he, the s^d Gopall, on Tuesday being the 6th Instant in the afternoon about six a clock mett wth one Ignacio D'Livera, a soldier (but whose name was then unknown to him) by the North Gate, who desired him to goe with him to Girgon to fetch some pice, and promised him to give him six pice for his labour; accordingly he went wth him first to his own house by the Portugueze Church, wch he showed him as the place he was to carry the pice to, after wch he carried him to Girgon, when saying the person was not at home from whom he was to have the pice, he told him he might goe home, but that it being late and dark he would goe along with him and see him safe; this being about eight a clock, he accordingly accompanied him, the s^d Gopall, over the Batty Grounds towards Dungaree, when coming to a place called Mombadew's Tank, he by force took from him a silver chain, one silver ring and two small gold rings, upon wch he, the s^d Gopall, being very much frightened, begged of him not to hurt him, to which the s^d soldier said, 'You will tell your mother and grandmother I have taken your joys,' but he, the s^d Gopall, promised him he would not, but notwithstanding the s^d soldier first took of his Turbet and would have strangeled him, but quitting that, he took a great stone and beat him on the head wth it till he fell down for dead, in wch condition he left him, and where he, the s^d Gopall, lay till daylight next morning, when he went to the house of one Changajee Naique Savant, nearest to the place where he had been hurt, who then carried him home to his mother's house."

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Chanjagee Naique Savant was then called to depose to what he knew of the affair, as well as Chiminy, mother of Gopall. Their evidence substantially bore out the statements made by the boy. Gopall was then bid to look at the prisoner and asked if he was sure that that was the person who assaulted him near the Mumbadevi Tank; he replied in the affirmative, adding that he knew him by sight very well. When Chiminy lodged a complaint on behalf of her son to Major Stanton, and when the latter asked Gopall to identify the culprit out of the two or three soldiers that were placed before him, "he immediately pointed out and pitched upon the prisoner at the Barr." The prisoner was then ordered to enter upon his defence, which he did as follows:

"He begun by denying the fact, and then giving acc^{t} of himself how employed, and where he was when this was said to be done, amongst other things he mentioned some joys wch he rec^{d} in his way home that night from a soldier, wth wch being urged and pressed, he acknowledges they are the same of wch the boy says he is robbed, and says he rec^{d} them from the affores^{d} soldier, whose name is Pistrell, who told him at the same time that he rec^{d} them from a comrade of his named Antonio Pereira, who bid him deliver them to him, the prisoner, to keep for him. The two soldiers being sent for, he was in the meantime asked what was become of s^{d} joys; he says that when he was taken up by the Guard and examined, he had them about him in his pocket, that next morning about three a clock being in the Trunk, Pistrell came to him for them, and he accordingly delivered them to him, and that probably they were now hid in the Guard room; where, by the way, notice is to be taken they were afterwards found. The soldiers attending and both denying their knowledge of the joys, the fact wherewith the prisoner stands charged or anything relating to it, and appealing to the Rowliers of their Company's that they both were at that time on Guard, one at the Bunder, and the other at the Battery, the prisoner requiring them to prove it, the Court adjourned to the 21st, when they and the Rowliers were ordered to attend."

On December 21 the Court reassembled and resumed the hearing of the case.

"On the 21st Instant the Court sitting and the prisoner at the Barr, Jacinth D'Romad and Joan Baptist, the two Rowliers appealed to the last Court day by Pistrell and Pereira upon oath declare, that on the fifth instant, both Pistrell and Pereira were upon Guard, the first at the Bunder, where he continued by doubling till the ninth, the latter at

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the Battery and then at the Mandivie for the same time. The prisoner having nothing to say against what they both deposed and being urged with the inconsistency and weakness of his defence, freely confessed himself guilty of the crimes wherewith he stands charged, but at the same time accuses Joan Pisterell of being a confederate with him in committing s[d] fact, alledging that he first knocked the boy down, while he robbed him, but this he was told from what before had been proved, as also from the boy Gopall's affirmative that only he was guilty, was very absurd, and the highest strain of malice to accuse an innocent person whom the Court were obliged and did accordingly clear, and unanimously found him alone guilty of the charge."

The evidence for and against the accused having been recorded, the Court proceeded to sum up the case, as it were, and with the object of justifying the course it took in submitting the proceedings of the trial to the Governor and Council, made the following very interesting observations:

"It is needless to observe to Your Hon[r] &c., that the s[d] Ignacio D'Livere is fully guilty in all the parts of what he is charged with, viz., not only robbing the boy of the afforesaid joys valued at 13 Rupees or thereabouts, but also of an intention to murder him and using the means for that purpose, leaving him as he immagined in a condition never to tell any tales, and all this for so small a value as thirteen rupees: upon the whole wee take the liberty to acquaint Your Hon[r] &c. that as to the robbery simply considered wee would not have troubled you but proceeded to a sentence according to former Presidents, but being at a loss how to find an adequate punishm[t] for the other part of his crime (the usual one of damages, a severe fine and imprisonment being rendered of no use by his poverty, &c., and no Act that wee know of reaching his life —that commonly known by the name of the Coventry Act respecting only dismembering and maiming, neither of w[ch] in this case has happened), wee humbly beg Your Hon[r], &c., will please to take it into consideration and sentence him as to Your Hon[r], &c., shall seem meet. The whole being submitted to your Hon[r], &c., by

"Your Honr[s] Most Obed[t]
"Humble Servants,
"JOHN HOPE, C[h] Just[t].
"JN[O] BRADDYLL.
"HEN[Y] LOWTHER.
"E. BENDALL.

"ARTHUR UPTON, Reg[r]."

In the proceedings dated February 1, 1727, we find the following extraordinary sentence recorded against the prisoner:

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"The Hon'ble the Govr and Councill having reccomitted the punishm^{t} of Ignatio D'Livere duely convicted of a robbery and an attempt to murder to the Justices of this Bench, after due consideration, his tryal being read, it is ordered that he receive thirty-nine lashes three several Court-days, being tyed to the gallows with a halter about his neck, with a paper over his head denoting his crime, and after condem^{d} to hard labour during pleasure, being first marked with an iron in the cheek as a public testimony of the notoriety of his offence."

II. Civil.

We have remarked elsewhere that during the eighteenth century the Court of Judicature in Bombay had to deal with the suppression of crime and flogging of criminals rather than with the settlement of disputes or adjustment of debts. Even in the Minute Book under examination the truth of this statement is borne out. But the Chief Justice and his colleagues were not engaged in the trial of offenders exclusively; they had several civil matters before them, which must have taxed their patience as well as their knowledge of law. Considering the difficulties under which they laboured at the time—difficulties arising out of causes over which they had no control—their patience must have been sorely tried at times. But though their patience was almost limitless, the scope of their legal knowledge was strictly limited. There cannot have been any lawyers in Bombay at the time and but few law-books. A large majority of the disputes which the Court was called upon to decide did not involve intricate questions of law or nice points of procedure. They mostly related to the payment of debts or partition of estates. The function of the judge was somewhat similar to that which the jury performs to-day: he generally based his decisions on facts, allowing the law to take care of itself. The judge prided himself on his strong common sense rather than on his knowledge of law. Briefly put, it may be said that three-fourths of common sense and one-fourth of law generally constituted the judgment of the Court. On occasions, however, the legal knowledge displayed was quite surprising. For instance, there is a very interesting report on a prize case in this record, in which the learned judges may be said to have surpassed themselves, the question at issue being whether the possession of a shybar which had been recaptured by the Portuguese

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from Angria, the pirate, vested in the captor or remained with the original owner of the vessel. The matter came on for consideration and decision at a special meeting of the Court, on Tuesday, March 21, 1727, consisting of the Worshipful John Braddyll as Chief Justice, and Messrs. King, Percivall, and Lowther as his colleagues. It will be interesting, to reproduce the whole report, which was finally submitted to the Governor. It is stated in the record as follows :

"*A Report to the Honourable Willm Phipps, Esqr., Presid^t & Govr of his Majestys Castle and Island of Bombay, &ca.*

"HONBLE S^R,

"Your Hon^r being already acquainted with the merits of the case in dispute between the Portugueze and us concerning a Shybar named *Sacry*, by a Report from this Bench dated the 9th of Feb^y, 1725/6, wee shall not repeat the same but proceed to acq^t your Hon^r that Santonaique, Merch^t inhabitant of Goa, the pretended owner of s^d Shybar, having obtained letters of request for a rehearing, your Hon^r's leave being first obtained, he was accordingly admitted and his case this day reconsidered : What he had to offer was a certificate under the hands of three officers then in the Portugueze fleet when s^d Shybar was quitted by the enemy and fell into their hands, wch not being alltogeather the same in substance with what is before related in the afforesaid report, wee shall take notice of a particular or two wherein these vary and hereto annex the original with a translate thereof in English. The difference we observe in this certificate and the relation wee before rec^d is this : The Portugueze say that upon the Shybar's being quitted by Angria, they immediately put their own people on board her and that they stopped a hole in her bottom made by the enemy in order to sink her. These two articles wee think necessary to mention as differing from our former Report, tho' at the same time wee are of opinion they are not any way material for reasons wch wee shall hereafter give, and as little to the purpose as the liberty these gentlemen take in a certificate of matter of fact of giving their opinion to whom s^d Shybar belongs : Upon the whole wee think nothing that has been offered in the least alters the case nor doe wee see the least reason for departing from our former opinion, but persist therein, that she is no prize to the Portugueze and consequently that Mahomed Hossan is the legal and just owner of s^d Shybar and now legaly and justly possessed of her for the following reasons wch wee beg leave to lay before your Hon^r :—To make the vessel that is taken by the enemy a just and legal prize it is absolutely necessary that she be brought *infra presidia* into some port or harbour of the Prince of State by whose subjects she was taken : Malynes in his *Lex Mercatoria* under the head of sea-laws positively asserts, that if a ship or goods be taken by a professed enemy who hath not brought it in *presidia vel locum tutum* for the making a prescription

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or a right, and afterwards the same is taken and recovered by any friend and the just owner claim the same, it ought to be restored to the owner; agreeable to wch is Grotius in his book *De Jure Belliac Paci*, things wch have not yet been carried *infra presidia*, notwithstanding they are still occupied by the enemy, doe not change their master by the law of nations, both wch agree exactly with the case before us. This vessel, tho' in the hands of the enemy, was never caried into any port of theirs and consequently when rescued was no legal prize, the owner not having lost his property in her, and restitution, when required, ought to have been made; if the enemy had carried her even into a neutral port, the owner might have claimed and recovered her for want of the aforementioned formality of carrying her first into one of their own; but this is a case so plain, and so many precedents may be produced for it, that it is needless to trouble your Hon^r^ further with it: wee shall therefore conclude by summing up our opinion, and wch with the utmost deference wee submit to your Hon^r^. That the Portugueze in rescuing and succoring s^d^ Shybar acted as became an ally and friend against a common enemy, but then we affirm the conclusion they drew from thence, that s^d^ Shybar was thereby a fair prize, is false and illegal, and with what solemnity soever they condemned her, wee say it was the solemnity of a tyrant power and not of law and contrary to all reason and justice, and that consequently no cause appears why Mahomed Hossan should not fully and finally be adjudged the legal and just owner of s^d^ Shybar and without further dispute put in possession: Wee are with the utmost respect,

"Hon'ble S^r^
"Your Hon^rs^
"Most Obed^t^ & Most Humble Serv^ts^
"Jn^O^ Braddyll.
"He^Z^ King.
"Ge^O^ Percivall.
"Henry Lowther."

We may safely say that there is no case in this record on which so much legal learning has been expended. The judges seem to have most carefully considered the main issue raised and decided the case after mature deliberation. They cite the authority of two ancient writers, Malynes and Grotius, who support their view of the law on the subject. The report has been drawn up in a sufficiently intelligible form, but the following note* may perhaps enlighten the reader on

* I am again indebted to my friend, Dr. Thomas Baty, for furnishing me with materials for this interesting note. Dr. Baty has made a careful study of Prize Law, and has written much on International Law, his latest book on the subject having been very favourably received.

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some of the obscure points touched upon by the learned judges :

"The question is evidently one of *recapture*. It is, as is well known, always a question between the original owner and the recaptor, whether the former is entitled to have any interest in the subject-matter of the dispute. Its determination depends upon whether the property was ever divested, and acquired by the first captor. The test of complete acquisition has varied very much. A rule (said to be derived from a Lombard game-law) which gained almost universal acceptance in the seventeenth century declared twenty-four hours' undisturbed possession to be sufficient for the purpose—a doctrine adhered to in the eighteenth and nineteenth centuries by such eminent writers as Lampredi and Klüber. But it is now universally held to be challenged by the modern (and apparently the *older*) doctrine declared by Bynkershock, that the prize must be taken into a safe port where she cannot be recaptured by the enemy. Only then, according to the practice of most nations, does the owner lose all claim to her (on payment of salvage), if she is recaptured. The bringing of a prize into a safe port is called bringing her *infra præsidia*. At the time of the case under discussion Great Britain followed the 'infra præsidia' rule, while Portugal adhered to the twenty-four hours rule,* and the contest seems to have arisen out of the conflict between these two theories. If Angria, the captor, was a *mere* pirate, without territory and acting under no commission, it is difficult to see how the 'infra præsidia' doctrine is to be applied. As a piratical capture can never operate as a transfer of property or as a stage in its transfer at all, being a mere theft, it seems certain that the Portuguese recaptors, in the present case, must have been obliged to give the prize up on receipt of meritorious salvage without any question. Consequently, it seems a safe conclusion to draw—and history seems to confirm it—that the captor can hardly have been a mere pirate,† and in that case the Court was justified on English principles in declaring the necessity of the shybar's being taken to a safe port in Angria's territory before becoming liable to capture by the Portuguese without regard to the claims of the original owner. But, in any case, it is clear that the Portuguese must have been entitled to heavy salvage, say one-third the value of the shybar. At the same time, Wheaton tells us ‡ that Holland and Spain gave such property wholly to the recaptors, provided that the pirates had had twenty-four

* At the present day, by special legislation, the original owner always gets back his property (subject to salvage) in case of recapture, so far as Great Britain is concerned.

† His position must rather have resembled those Barbary States whose piratical practices so often raised questions as to whether their vessels were really pirates. The received opinion was that they were not, as they acted under the regular authority of a definite Government which could be called to account for their malpractices.

‡ *Maritime Captures*, p. 237.

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hours' possession; and it is quite likely that Portugal also accorded this unique recognition to piratical capture.

"Valin mentions a decree passed at Bordeaux in 1635, in favour of a Dutch subject who had retaken a French vessel from pirates, and was thus accorded by the French Court the same right which his own curious law would have given him: an opinion reprobated by Pothier."

Let us now turn to some of the other interesting cases recorded in this Minute Book. A dispute of frequent occurrence was as regards the possession of an oart or the partition of an estate. In cases in which the parties were natives, the Court generally appointed arbitrators by consent, particularly when the adjustment of long and intricate accounts was involved, or referred the matter to officers who were known as Vereadores at the time. Who were these Vereadores? Etymologically defined, the term "Vereadores" means "verifiers," or "certifiers." Sir Michael Westropp, while preparing his elaborate judgment in *Naoroji Beramji* v. *Rogers*, seems to have consulted the then Portuguese interpreter of the Court as regards the definition of this term. The latter, instead of confining himself to the definition, enumerated the duties of this officer. According to him, a

"Vereador is one who holds the staff or wand of power; is a member of Council or of the Chamber; a functionary charged with the administration of the police or the repairs of public roads; a bazaar superintendent; a magistrate or public functionary who fixes local tariffs or taxes." *

But Da Cunha disputes the derivation of this term from the Portuguese word *vara*, Latin *virga*, meaning a rod, and says that a Vereador had nothing whatever to do with the holding of the staff or wand of power.

"*Vereador*," observes the learned doctor, "simply corresponds to the word *procurator*, or attorney, and was in older times equivalent to *consul* and *decurio*. He never held the staff of power in his hand, but wore a *toga* or gown, as Vereador da Camara or member of the Municipal Corporation." †

There also seems to be some difference of opinion regarding

* Bombay High Court Reports, iv. p. 90.

† *The Origin of Bombay*, p. 230.

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the duties the Vereadores were called upon to perform. According to Westropp, C.J., the Vereadores assisted in collecting the pension fixed by Aungier's Convention; also in mustering and officering the island militia, and subsequently in collecting the tax substituted in 1718 for military service. But, according to another authority, they had to perform other duties as well. Professor Wilson describes them, in his Glossary, as "a class of native functionaries in the island of Bombay, whose duties appear to have consisted in the guardianship of orphans and the care of the effects of deceased persons dying intestate"—a definition which derives support from the cases cited below. The Vereadores seem to have held office under the Portuguese Government, and when the English took possession of Bombay, their services were continued. These officers must have rendered useful service to the English, and helped the Court in the settlement of disputes among the various communities then inhabiting the island, by their intimate knowledge of the manners and customs of the town. About the time of which the record speaks, the Vereadores were given certain powers in regard to judicial matters, but they exercised them so illegally and unjustly, even to the extent of assuming jurisdiction to which they had no right whatever, that in 1775 Government were obliged to take severe notice of their conduct and pass orders restricting their powers and regulating their duties. The judges had great faith in their integrity and impartiality, and generally confirmed their awards. Arbitrators were also appointed by the Court, and when both parties agreed to their report, it was, as a matter of course, confirmed judicially. We shall pick out only one such instance out of the several which find a place in this record:

"Antonio D'Rosario on the one part and Matheas D'Mell on the other jointly present to the Bench the Report and Judgement of the Arbitrators chose on each part to adjust and divide the estate of Francis D'Azevada dec[d], to which they were mutual heirs, which award or judgement the parties have assented and agreed to, and beg the Court to approve and confirm the same and that it may be registered; ordered according to the prayer of said petition, which the Register is to see executed."

But when the Court was not convinced of the *bona fides* of the Vereadores, or when it found that their award was not just and

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equitable, even though supported by the custom of the country, they did not hesitate to set it aside. For instance, they overruled the opinion of the Vereadores in the following case:

"Nimbajee Carpenter, in a petition to the Court, sets forth that whereas the eight of April, one thousand seven hundred twenty-six, he lent to Jeronimo Soldania Patel, Antonio Governe Tindal and Joseph Tindal, three coolys, Dolcars of Mazagon, six hundred and fifty Xs for which he had security half of an oart call'd Fofull Varee, the produce of which half oart he was to enjoy the term of nine years, which was to be as an equivalent for the interest ariseing from the said sum of six hundred and fifty Xs during that term, but whereas he has enjoy'd the same for some time and does not find the produce answer the legal interest of his money, he begs that he may be releived and eas'd of his contract, and pleads in his behalf the opinion of the Veriadores annexed to his petition (that it is the custom of the country), the Court takeing this into consideration, overrule this opinion of the Veriadores as not founded on equity, for as they themselves confess, had the produce been more than the interest, the said Nimbajee had not been oblig'd to have accounted for it, when in all reason and justice if it holds on one part it ought to hold on the other: and decree accordingly that the contract is vallid and that both the partys are oblig'd to stand to it, the terms agreed."

Here is another action regarding an oart in which the Court granted equity of redemption:

"Domingo Borges, soldier inhabitant of Mahim, sues Manll Lemos, inhabitant of Mazegon, for an oart which he formerly mortgaged to him, the sd Manll De Lemos, for one hundred and fifty Xs, upon condition that if the sd Domingo Borges did not, at the expiration of the sd three years, pay him the sd sum of 150 Xs with the interest of nine P.Ct., then the sd oart to be sold to him, the sd Manll De Lemos for Xs 250; now the said Domingo Borges proving by the testimony of Capt Richd Oliver that he tendered the sd money with the interest thereon within the compass of a month after the experateration [expiration?] of the affores[d] term of three years, and the defendant having nothing to object but the letter of his contract. The Court overrule the same and grant equity of redemption to the sd Domingo Borges, and he offering to pay the money into Court, the Court order the defendant to receive the same, and to give the plaintiff a discharge in full, wch having accordingly [been?] done, he is further ordered to surrender sd oart and put the plaintiff into immediate possession."

As we have already noticed, Ragouset, the premier goldsmith of Bombay, appears more than once in criminal cases in the rôle

of prosecutor. Being a man of means and owning some property on the island, we should have been surprised if he had not figured either as plaintiff or defendant in a civil suit. We find him playing the part of plaintiff in the following case:

"Ragouset Goldsmith, inhabitant of Bombay, sues Madousett Goldsmith, inhabitant of Bundera, on a mortgage on three oarts situated in Mahim for a sum amounting to 810 Rupees wth interest thereon, and desires the Court to put in possession of s^{d} oarts in order to have them sold and satisfaction made him, the other party having for a long time trifled wth him and kept him out of his money without paying interest or letting him enjoy the fruit of any part of the oarts. The Court, finding the mortgage regular, drawn in due form and registered, have no manner of objection to the petition, and Cundset, the defendant's son, attending and having nothing to say but to beg time for his father's coming over, the Court grant him twenty-one days, when they bid him acquaint his father the Court would, upon his non-appearance, proceed and grant Ragouset his due demands."

But the Court was not put to any further trouble in this matter. For, about a month after, we find the following entry recorded:

"Ragoosett Goldsmith begs leave of the Court to withdraw his action against Madousett, inhabitant of Bundura, vi^{d} Court proceedings of the 5th October, he having adjusted and rec^{d} full satisfaction from the partys, his request is granted."

There was another man at this time in Bombay, also a Hindu, by name Kenso Ram, who must have commanded some influence with the authorities. On September 21, 1726, he presented the following petition to the Court:

"That having formerly obtain'd a dispatch from this Bench to the Veriadores of Bombay to examine into a dispute between him, the petitioner, and Trimbuckjee Carpenter, inhabitant of Salset, concerning an oart call'd Millique, belonging to Banoo, nephew of said Trimbuckjee, that the Veriadores, in persuante of said dispatch, having summoned the said Trimbuckjee twice and a long time being past and he not appearing, the Veriadores proceeded in their examination and accordingly past a certificate in the petitioner's favour, which certificate is to his petition annexed, which he begs the Court would please to confirm and to grant him in possession of said oart, he paying the remainder of the money still due for said oart."

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Banoo, however, opposed the application on the grounds, among others, that the said oart was his inheritance, it having descended to him from his father, that he being young, Trimbuckjee, his uncle, took charge of the estate and fraudulently sold it to Kenso Ram for forty rupees, representing to him that he had only rented it, that he was tricked into signing the agreement of sale, the contents of which he was not acquainted with, and that the said agreement was null and void, he being a minor at the time. The Court was so far convinced of the truth of Banoo's allegations that, after due consideration, it arrived at the following conclusion:

"That the s^{d} Trimbuckjee had no right to dispose of the estate of the s^{d} Banoo and that no act of s^{d} Banoo can be valid, he being then a minor, and consequently the Veriadores' reasons for their certificate in favour of Kenso Ram are bad, they alleging nothing else for it but that the s^{d} Banoo had before join'd with his s^{d} uncle in two acts of the same nature and for which Trimbuckjee at that time gave this reason, that it was in order to pay his father's debts; upon this the Court being about to determine, Kenso Ram requested that they would please to suspend their judgment, and that they would grant a pass to the s^{d} Trimbuckjee to come upon the Island without being molested for debt or the like, that then he doubted not to give such reasons as might quash the plaintiff's allegations, which in consideration of Kenso Ram's character is agreed, and forty days alowed him to bring over the s^{d} Trimbuckjee, during which time the Court are so far pleased to favour him as to let the cause hang in suspence."

But the cause did not "hang in suspence long," for, only a fortnight after, Trimbuckjee Carpenter appeared in Court, pursuant to their letter of license. After the proceedings of the last Court-day were read out to him, he was asked what he had to urge on behalf of himself and Kenso Ram, when he replied that Banoo's estate was sold in order to pay off the family debts and that he had acquainted his nephew with the contents of the deed of sale, which, however, the latter stoutly denied. Thereupon the Court passed the following decree:

"That Bonna (Banoo) was and is now a minor, and the legality of what has been done by his said unckle is thereby destroy'd, and it appearing that the said Trimbuckjee Carpenter has appropriated the forty rupees rec^{d} in hand of Kenso Ram to his own use, direct that the said Trimbuckjee Carpenter pay back the forty rupees with all the charges

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and damages arisg from the premises to Kenso Ram, at the same time obligeing the boy Bonna, when he comes of age, if he thinks proper to dispose of the oart in dispute, to let Kenso Ram have the refusal thereof according to the custom of this country, he being already legally possessed of one moiety."

There are one or two points worth noticing in this connection. In spite of the wealth and influence which Kenso Ram possessed, the Court was not led into passing a decree in his favour. They held a searching inquiry into the matter, and decided the suit after patiently hearing both sides. The judges were above prejudice, above outside influence of any kind. The days of Nicolls and Vaux had gone; their place was now worthily filled by Hope and Braddyll, Percivall and Lowther—men who, whatever their faults, were just and upright, men who maintained the best traditions of the Court of Judicature in Bombay. Another point worth noting is the fact of Trimbuckjee Carpenter being out of British territory and beyond the jurisdiction of the Court. He had to be sent for by a special letter of license, to guard him, we suppose, against molestation from his creditors on the island. It was the favourite device with men unable to pay off their debts, as it is even to-day, to escape into Portuguese territory, and, as they thought, beyond the reach of the law. But there must have been some sort of understanding between the English and the Portuguese, whereby criminals as well as debtors, who evaded summons of the Court by remaining outside its jurisdiction, were handed over to the proper authorities. This system worked well, on the whole, but sometimes there was a hitch, as is apparent in the following case:

"The petition of Isabella Roderigues, Joan D'Penha, and Francisco Roderigues sets forth that they having entered an action against Maths D'Cruz, inhabitant of the other side, which was refer'd to the Veriadores, who by the then Chief Justice having duly twice summoned him, the sd Maths D'Cruz, in return have recd letter of request from the Chief Justice of Bassein forbidding them to proceed and summoning the petitioners to appear there, but whereas they are inhabitants of this Island and the estate in dispute being likewise here, they pray this Court to determine this and direct the Veriadores to proceed according to their usual form in examins into this affair, and to report the same in due time to this Court, where they pray they may be heard and justice done them, which the Court see no reason for why they should not grant and order the Register to issue out their orders to the Veriadores to proceed and report the

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same in due time: and accordingly to give notice to the s[d] Matheas D'Cruz that if he does not appear (to specifie to him) on a certain day which they are to appoint, the Court will proceed to a finall determination and register his contempt."

The Court was very particular that its letters of request should be strictly obeyed. For when one Babou Chitty, who had gone "on the other side," *i.e.*, beyond the jurisdiction of the British Court, failed to answer the summons issued to him, the Chief Justice severely reprimanded him "for not paying a more exact obedience" to the order of the Court. The dispute in which Babou Chitty was involved was rather interesting. He had evidently contracted for the sale of certain property in the hands of one Antonio Telles De Moneses, but tried to evade fulfilling the contract on the plea that the owner had not a just title to sell the estate, and in support of his contention produced a paper he had obtained from the Chief Justice of Bassein. The Court, however, held that this was no legal objection, for the following reasons:

"The plaintiff being guardian to the parties concerned, who were his creditors and in one family, and consequently what occasion for any publick division; and as there was none made nor occasion for any, how could it be enter'd in the publick registers of Bassein, which is the objection in s[d] paper? Besides, the s[d] Antonio Telles De Moneses has made it appear that he has cleared the s[d] estate from all debts and incumbrances and has his title thereupon free and fully vested in him, and which is confirmed to him by the Judge of the Orphans, who is to be deemed a legal and proper magistrate in such cases. The contract therefore is without all dispute valid and ought to be executed agreeable to its tenour. The Court therefore absolutely confirm the former decree and order that Babou Chitty comply with it without any further delay, and whereas the plaintiff offers to goe on the other side, and put the s[d] Babou Chitty in immediate possession, provided he pay the money or give security, he is required to doe the one or the other or an execution shall be issued out against him and his estate and the whole sold to make satisfaction to this as well as his creditors, with which resolution he is now acquainted."

We have observed above that most of the matters which the Court, in its original civil jurisdiction, was called upon to adjudicate were petty, and did not tax either the patience or the learning of the judges. At times, however, an action of some

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importance, involving knotty points of law and intricate questions of fact, was brought by wealthy merchants, when the Court rose to the occasion, and spared no pains to get at the truth and give what in its opinion was a fair and equitable judgment. For instance, when one Bhairamsett, agent for Sunderdas Vistumdas, "a Hindu Merch[t] inhabitant of Bendure," presented a petition to the Court on November 16, 1726, a long discussion ensued. The facts of the case are so interesting that, in spite of its great length, we shall take the liberty of transcribing the whole proceedings from the record. The petition set forth the following facts:

"That Balshette, a Merch[t] inhabitant of Onore, bought of the s[d] Sunderdass rice to the amount of one thousand pagodes,* w[ch] rice he loaded on ship *Bussorah Merch[t]*, whereof Mons[r] Senequier, Frenchman, was Supercargoe on a voiage to Muscat and for w[ch] Balshette promised to pay on return of s[d] ship to the port of Onore, and whereas the time proposed for the return of said ship hath long been elapsed and no appearance of s[d] ship at s[d] port, Sunderdass having demanded s[d] money of Balshette, he in lieu thereof hath given him a letter to the s[d] Mons[r] Senequier, now in Bombay, therein directing him to pay to the order of s[d] Sunderdass for one thousand pagodes out of the amount of his goods and the remainder to be accounted for at Surat: he therefore prays the Court would examine into this affair and cause the s[d] Mons[r] Senequier to pay the s[d] thousand pagodes and deposite the same in some good hands till he can produce such better proofs as may be more satisfactory to the Court."

Monsieur Senequier was thereupon summoned and examined by the Court. His depositions have not been recorded: there are no notes of evidence in this Minute Book, such as are usually taken down at some length by the judges to-day. Probably the Registrar kept rough notes of the oral evidence for the consideration of the Court. After Senequier's examination was over, the Court proceeded to state the facts of the case as follows:

"Cassisett hires the *Bussorah Merch[t]* of Nanaby, Parsee Carp[r], for

* Pagoda was a coin current in Madras. One of the earliest uses of the word, applied as a designation of value in money out of the limits of Madras, occurs in the Mayor's Court Charter of 1726, which enacted that appeals lay from the Mayor's Courts to the Governors and Councils, and thence to the King in Council, in causes involving sums above the amount of 1,000 pagodas.

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9,000 rupees on behalf of his brother or kinsman Boozby in Onore, being thereto commissioned by him, taking up money from the s^d^ Nanaby to defray the expence of the outsett. The ship proceeds to Onore and from thence and Mang^a^ is loaden wth rice for a voyage to the Gulph of P.sia, but she putts into Muscat and there the cargo is sold. The ship returns again to Onore, where Boozby relades her wth a cargo of rice, &c., and is return'd back again to Muscat, wth orders to be sent back so early as to take in a Mallabar cargo at Callicut and proceed therewith the same season. The ship being detain'd long in her voyage to Muscat and her bussiness delayed by troubles there, the Capt could not proceed wth her to the coast, but dispatches her to Surat wth 300 tomns cons^d^ to Boozby's agent Cassiset in Surat. The ship putts into Gogo, not being able to reach Surat thro' the lateness of the season, and the Capt stays at Muscat to recover the rest of the money and then proceeds in a vessell wth the effects for Bombay. Cassiset takes up money at Respondentia in Surat, Boozby does the same at Onore, &c., Balshette, a kinsman of Boozby's, p'tends to be p'tner and writes to the Capt to pay 1,000 Pag^s^ for what he is indebted to Sunderdass for rice he bought to lade on her. Nanaby now writes to the Capt to pay nothing to Boozby but to bring all the money to Surat, to answer freight charges, &c.; Boozby is run from Onore and in the Port^ze^ country and is a bankrupt; Cassisett is also gone from Surat, and not satisfied the Respondentia creditors, to defraud whom as well as his other creditors these voiages of Boozby's seem to have been calculated, and wch upon the strength of this creditt Boozby has effectually done: and it appears Balshette was in the secret, having intercepted Monsr Senequier's letters advising him not to proceed the voiage on reasonable presumption it was undertaken for the afors^d^ ill purposes. Monsr Senequier from his commission &ca. makes it appear said Balshette is none of his employers and consequently has no title to draw upon him, but must seek satisfaction from the principalls, what is to be expected from the remaining stock being very little; s^d^ Monsr Senequier having made returns to Boozby agent and brother Cassiset of 300 Tomands wch is sunk by the s^d^ Boozby or his agent. The ship charges he computes at about 200 Tomands more and admitts he has about 200 more in his hands, out of wch is to be deducted for 40 candy of dry dates and six horses left in the hands of Boozby at Onore and wch he has converted to his own use; the remainder, wch is very inconsiderable considering the demands, Monsr Senequier professes he is ready and will upon his arrival from Surat pay to those who have a title to call upon him and are ennabled to endemnifie him from any further trouble."

From the above-mentioned facts, which we confess have not been marshalled well, it will be seen that the transaction out of which this dispute arose took place at the port of Surat, and that most of the parties interested in the suit also lived in

Surat. Consequently, the Court referred the parties to that place, and, in doing so, passed the following orders:

"Upon the whole the case appearing to be thus truely stated, the Court cannot see how they can releive Sunderdass according to the tenour of his petition. Balshette undoubtly is in the secret with Boozby, being his p'tner. Boozby since he received the three hundred Tomns sent by Monsr Senequier on the ship, has been at Onore wth Balshette and Sunderdass, and might out of the s^{d} summ, if he meant, honestly have discharged Sunderdas' debt. Nanaby, to whom Boozby is indebted 15,000 Rups. upon acc^{t} of s^{d} ship and voyages, with very good reason desires Monsr Senequier to bring what money he has to Surat; the Respondentia Cred^{rs} who have the first and best title to be paid out the effects on board s^{d} ship are not yet paid anything nor likely to be except very little as circumstances now stand. Surat is the port of the ship sailed from and where most of the parties concerned live, the remains^{e} effects are about to be transported thither by Mr. Senequier and there being a better opportunity there to unravel this entangled affair and all parties to adjust their affairs as they shall see cause, for wch reasons the Court wave determineing in this point any further then thus stateing the case as it appears to them and referr the partys to Surat, where both the complainant and defendant are bound and their principals live, and where without controversy Monsr Senequier will be obliged to adjust with his employers from whom he is to have his discharges, they being the proper persons wth whom he is to account."

An equally interesting case, but one involving an entirely different question, was that which Chief Justice Cowan and the other justices decided on June 28, 1727. The point there raised appertained to a certain custom or practice prevailing "on the other side," as the Portuguese territory was briefly called. It is recorded in the Minute Book as follows:

"Antonio D'Silva, attorney for Simon Murzello of Mahim, in a petition to the Court sets forth that his principall being farmer of a village on the other side, which he took of Rama Santa, legal attorney to the proprietor of s^{d} village, into whose hands he again resigned it, when his lease expired; at which time the Currumbees of s^{d} village were indebted to him in a very considerable summ, for which he sued them in the Court of Bassein, upon which Rama Santa gave him an obligation for a sum (as it now stands liquidated) amounting to five hundred and ten X^{s}, being in part as security for some particular Currumbees and the residue some batty belonging to Simon Murzello for which Rama Santa rec^{d} the money: and whereas there still remained due 827-0-1 X^{s} which was disputed whether Rama Santa was to recover and pay or not; a petition was thereupon presented to Jno Hope, Esqr,

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the then Chief Justice, who was pleased to refer the same to four merchants, arbitrators (to which the attorney of Rama Santa agreed, appointing two of s[d] arbitrators on his part), who having determined the same according to their judgment and declared it as their opinion from the acc[ts] and certifficates that they have perused and examined, that Rama Santa ought to pay the summ of five hundred and ten X[s] in hand, and that it is further incumbent upon him to recover the other summ of 827 X[s] from the Currumbees of s[d] village and pay the same to Simon Murzello in due time, it plainly appearing to them that it is the custom and practice on the other side, that the new farmer stands obliged to recover(?) and pay to the old all the debts due from the persons occupying the premises; all which he humbly beg the Court will please to confirm and order accordingly. The attorney of Rama Santa (Ganba Purvoe) being called and asked what objections he had to make why the prayer of s[d] petition should not be granted, he pretends he has several objections to several particulars of the acc[t], which, as he would insinuate, the arbitrators would not attend to. The Court acquainting him they were willing to satisfie all persons, they would indulge him so far as to grant him one week to revise s[d] acct[s] and make his objections and appoint the same four persons to hear and answer thereto and to report the same to the Court next sitting."

A week after, the arbitrators adjusted the accounts and gave their award, which so satisfied Ganba Purvoe, Rama Santa's attorney, that he raised no objection to the Court passing a final decree in favour of Simon Murzello for the two sums of money found due to him. But if his attorney consented to the decree, Rama Santa himself did not; for we find that about a month and a half after it was passed, another attorney on his behalf made an application to the Court for leave to appeal to the Governor-in-Council. This fact invests the case under notice with an interest peculiarly its own, for it is the only isolated instance of a civil matter, in this record, in which such an application was made and granted. As has been observed in another chapter, an appeal lay to the Governor and Council, as constituting the Superior Court of Bombay, from all decisions of the Inferior Court. And it was under this regulation that Rama Santa applied for leave to appeal. In the proceedings dated August 16, 1727, we find the following entry:

"Vittojee Sinay, petitioning the Court for leave to appeal from their sentance and decree against Rama Santa, inhabitant on the other side, the Court granted him leave and order execution to be stop'd till further order."

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Curiously enough, a similar entry finds a place in the record immediately after the above. It runs as follows:

"Rama Santa having appointed a new attorney to act for him, he appear'd this day in Court and petitioned for leave to appeal to the Hon'ble President and Councill, which was granted him, and an order given to stop the execution of the former sentence of this Court till further orders."

Whether Rama Santa did file an appeal afterwards, and with what result, there are no means of ascertaining. Probably the Governor and Council kept a separate Minute Book in which were entered the proceedings of all appeals and other cases which the court of first instance was not empowered to hear.

Much of the trade in Bombay in the seventeenth and eighteenth centuries was carried on by sea. The port of Bombay was then the largest and the busiest on the Western coast. Naturally, therefore, many of the litigants were seamen, and the Court was well occupied in settling disputes among them. In this record there are to be found cases in which the captain sued his mates and mates their captain. We shall pick out for reference the one which seems the most interesting. The nakodah or owner of a certain ship sued two of his mates for loss occasioned to him by their refusal to proceed on a voyage on the ground that the ship was unseaworthy. The action has been thus stated in the Minute Book:

"Wallydaud Caun, Noquedah and owner of ship *Mahomet Servary*, complains of Mon^{r} Joan Babtist Cailbot and Mon^{r} Lewis Bracelet, first and second mate of s^{d} ship, and in a petition sets forth that he has several good reasons to beleive that the loss of his passage to Bengall, where he was bound, is owing to his s^{d} two mates, and whereas for that reason he thinks it necessary to discharge them, he prays the Court would oblige them to repay so much of what they have rece^{d} as impress as there is wanting of the three months for which they rece^{d} the s^{d} advance. The defendants being called upon to answer thereto, they on their part alledge that the ship was not fit for the sea, making a great deal of water and being unprovided with tackle and other necessarys for a voiage, which they confirm by the testimony of the other marriners present in Court, to which they add that at their first setting out from Surat, being obliged after six days to return again, they then remonstrated that the ship was not in a condition for such a voiage, which remonstrance signed by themselves and several others they produce in Court;

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notwithstanding which the owner himself then coming on board in order to proceed the voiage and urging and intreating them to continue with him, they were prevailed upon so to doe, but finding by that time they were off this Island, they could proceed no further without endangering themselves, the ship and all that was in her, they put into this Port, and whereas they have done their duty on board so long and as far as was consistent with their security, considering the incapacity of the ship, they humbly leave it to the Court whether any part of the impress is to be returned, and conclude humbly praying that in consideration of their great disappointment and loss of time, the Court would please to order their immediate discharge. The Court taking the premises into consideration unanimously agree that the Noquedah has not made good the allegations of his petition, that for the above consideration he has no title to any part of the impress money advanced and that the defendants ought to have their discharge, and the Noquedah having nothing to object, he was accordingly ordered to discharge them."

Not only was the nakodah obliged to discharge his mates, but he was called upon to pay whatever money was due to them, after the accounts between the parties were adjusted by four arbitrators appointed by the Court, including the "Moody and the Codgi."

Disputes regarding inheritance were not infrequent. In such cases the Court must have experienced no small difficulty in deciding between the parties. There were so many different communities even then in Bombay, divided into castes and sub-castes, and observing customs to which the English were perfect strangers. In cases in which the litigants were Portuguese, the Court generally referred the matter to the Veriadores first, and allowed itself to be guided by their judgment; when they happened to be natives, the Codgi and the Chugulars, as these native officers were called, seem to have been consulted. We shall cite an instance of each of these two cases:

"Domingo Dias, inhabitant of Bundora, and Manoel D'Remedios, having maried the two daughters of Paula D'Penha, the wife of the latter (D'Remedios) dying without children and her portion in consequence thereof being to return to her mother, she for some good considerations was pleased to remit some part of the s^{d} portion to her s^{d} son-in-law and to receive a composition for the whole. Domingo Dias, the husband of the surviving daughter, objects to this as injuring his right, since his wife is to inherit the whole after the death of her mother, and consequently alledges the mother has no power of making any such composition. This being referred to the Veriadores, they give it as their

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opinion that the s[d] Paula D'Penha being independant of anyone and sole proprietor of her estate during her life and that her daughters are not to inherit till after her decease, notwithstanding which they had given them handsome portions, she has it in her power to accept of a composition for that which by the death of one of her daughters reverted into her hands, in consideration of the good behaviour of her son-in-law, the desire of her deceased daughter, or the like; Domingo Dias in answer to this (not attending in person tho' duely summoned) only giving the several opinions of the lawyers on the other side, who differ much and disagree. This Court is of opinion that in reason and equity from the above considerations and several others which are and may be urged, the s[d] Paula D'Penha hath a power to make s[d] composition, and therefore confirm the opinion and act of the Veriadores and decree accordingly."

In the other case the parties were Mahomedans, or Moors, as they were called in those days. There, one Abramji Sherif, on behalf of his mother, his sister, and himself, widow and children of Sherif Ally, sued Amadji and Daudji, sons by a former wife of the said Sherif Ally, for their proportion of the estate left by the deceased. The facts have been thus stated in the record:

"Sheriff Ally, inhabitant of Mahim, dies and leaves behind him by his first wife, deceased, two sons, and by a second wife now living one son and one daughter: his effects consist of a house and grab at Cambay and a house and a great many other goods and chattels at Mahim, the particulars whereof are set down in an inventory, but the value not ascertained. The surviving wife and her children demanding their share applyed themselfs to the then Chief Justice, who referred them to the Codgi and Chugulars. They after taking an inventory give it as their opinion that the surviving wife and her children should have one moiety (the surviving wife, in consideration of this, waving her dowery, which according to their custom she may demand). The two eldest brothers are in possession of the house and grab at Cambay and pretend that there being a debt upon both, the remainder will not amount to the value of the house and effects at Mahim; notwithstanding they will be content with that for their share. The widow and her children, on the other hand, object that the house and grab are worth a great deal more (or why should they chuse it) and demand what debts there are, for they know of none; and add that they have reason to beleive a great deal is hid and concealed by their brothers. They pray in the meanwhile that they may be permitted (?) possession of what effects there is now in Mahim, and that the two brothers may be obliged to acc[t] with them for the whole, from whence an equal dividend may be made. Amadjee Shreif, the oldest brother and defendant in this cause, being called upon to answer hereto, objects nothing to the act of the Codgi and Chugulars, but alledges that the plaintiffs, when his father died, conveyed away out

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of the house a bag of money to the value of five hundred rupees, but there appearing no proof thereof, and the plaintiff offering to purge himself of this by an oath in Court, it was admitted and he (was?) sworn accordingly. The defendant then urged that the grab at Cambay had cost a great deal in repairs and the like, but this being since the death of their father, the Court direct the Codgi and Chugulars of Bombay and Mahim to examine the whole affair, make a just estimate of the value of the whole, as well the grab and house at Cambay as the effects here, as they stood at the death of their father, and to calculate an exact dividend of the whole and then report the same to the Court."

What the report of the "Codgi" and the "Chugulars" was, we cannot say, for the record is silent about it. But the following entry from the proceedings of the next Court-day shows how litigants sometimes behaved themselves:

"Amadjee Shreif and Abramjee Shreif, the two brothers litigant last Court, having appeared before the Codgi, persuant to the order of Court, but behaving there very indecently, quareling, giving ill language and striking one another, upon the report of the Codgi, the Court as a punishment for such behaviour fine them each ten rupees and commit them till they pay it."

The Court was at times seriously hampered by the difficulty of understanding native languages. There was an officer known as the "linguist" attached to the establishment of the Court, but if we may judge of his qualifications by the amount of the pay he drew, they cannot have been of a high order. The linguist, we find, was allowed the princely sum of Rs.6 per mensem—a sum which will not now tempt even an illiterate person to serve as a peon. Ten years after the establishment of the Mayor's Court in Bombay, one Bhicu Sinay, who had been acting as interpreter without pay, was confirmed in his appointment on Rs.8 per month. We are not surprised that Bhicu had to ask for an increase in his monthly allowance as it was "too small for the trouble and support of his place"; after some consideration it was agreed to allow him a gratuity of one hundred rupees for the time past, his pay at the same time being increased to Rs.15.* But it was not till 1778 that an officer

* Bhicu Sinay, be it noted, was appointed interpreter to Government. Whether he acted as interpreter to the Court as well, or there was a separate linguist given to the justices, it is difficult to say.

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with the required qualifications and a salary worthy of the post was appointed as interpreter to Government. In that year the Board being of opinion that the employment of linguists in transacting business of importance with the country people was very improper, a Civil Servant named James Sibbald was appointed to act as interpreter with the respectable salary of Rs.300 per mensem.* This, is, however, somewhat of a digression. Whenever the Court experienced some difficulty in deciding a matter owing to its ignorance of native languages, it referred it either to the Codgi and the Chugulars or to some trustworthy men of its own choice. For instance, when the widow of one Narjee Nagjee, a Bhansalee, sued another Bhansalee for a debt due to her, being the balance of an account, and when the Court found that the account-books of both parties were kept in the "Gentue" language, it ordered Ramchandra and Odejee to examine the said books and report the result next Court-day. Another case illustrating this point is stated as follows:

"Seid Buddum, for a long time a prisoner for a debt to Seidally Chubdar, being called to the barr, and pleading he was only a person in trust, a hired servant, and had no concern in the charge against him for a debt of 204 rupees to Seidally for sword-blades, whereas he was only a person imployed to carry them, and Seidally denying this, and the case appearing very intricate from the difficulty of understanding the language, the Court order that the Codgi and three Chugulars examine this affair and report the same next Court-day."

An action was brought by a Portuguese and his wife for the recovery of a small debt, and it will be interesting to notice the details here, as they throw light on the morals and manners prevailing in those days. The facts of the case are as follows:

"Michal Razer in behalf of his wife Rose Razer, sues Mr. Wm Cordeux for a sum of money he pretends to be due to his said wife when in Persia, but she not being able to prove that she ever entrusted Mr. Cordeux

* The Directors, however, disapproved of this appointment, and wrote on July 5, 1780: "The appointment of Mr. James Sibbald to act as interpreter in transacting business with the country people at a salary of Rs.300 a month does not meet with our approbation. Our affairs have hitherto been conducted without an officer of that denomination; neither will we suffer such innovations. If you wish for our good opinion, you must be studious rather to retrench than to increase our expenses, which are already too burthensome."

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with any money any further [than ?] that she put a chest into his room wherein her money lay, of which she kept the key and went to it when she pleased. On the contrary, Mr. Cordeux charging her with severall summs expended for her use, but which she claimes with great impudence as her due for some familiarity betwixt them. The Court after animadversion on such behaviour and the assurance of publickly averring it in a Court think the claims on both sides pretty equally (balanced) and both partys acquiescing therein, direct their quitting their severall claims and giving each other mutuall releases."

Another case arose out of the above action. It is stated thus:

"Mr. Henry Lowther charging Mr. Willm Cordeux upon the testimony of Capt Bates and the aforesaid Michael Razer and his wife with abusing his character by taxing him, the said Mr. Lowther, with not paying to the said Rose Razer the full sum of what he had remitted him and thereby perswading her that Mr. Lowther had wronged her, the Court severely reprimanded him and acquainted him that nothing was of a worse nature than making free with gentlemen of worth and dignity, and fine him the summ supposed to be wanting, viz., a defect in the exchang, being rupees ninety-one, to the poor of the parish."

The fact worth noting in this case is not the severe reprimand which the Court very properly administered to William Cordeux, but the presence and participation of the complainant in the trial. For the plaintiff formed one of the tribunal which decided this action. The pleasure—we trust it was unmixed with malice—with which Mr. Henry Lowther must have signed the proceedings of that day can be easily imagined!

No love was lost between the Portuguese priests and the English. But when the Padre was at times obliged to seek the relief of the Court he was given a patient hearing and impartial justice. For instance, the following action was brought by Padre Pedro against one of his flock on December 7, 1726:

"Padre Pedro, in behalf of the Roman Catholic Church at Mahim, begs leave to enter an action against Diogo D'Costa, an inhabitant of the same place, for a legacy left to the said Church by his dec^d wife, praying that they may have a hearing in this Court, and that Diogo D'Costa may be summon'd in due time to answer thereto, wch is admitted and the Reg^r order'd to acquaint Deog D'Costa therewith."

The facts of the case are more fully stated in the proceedings

of a subsequent date (February 11, 1727). As they may be found interesting we reproduce them below:

"The affair between Padre Pedro, the present incumbant in the Church of St. Michall at Mahim, in behalf of s^d church, and Deoge D'Coast, inhabitant of Mahim, concerning a legacy left by the wife of the s^d Dioge D'Coast to s^d church, being taken into consideration, the parties present in Court being heard: it appears that upon a contract of mariage between the s^d Dioge D'Coast and his wife, she reserved to herself the disposal of one moiety at her decease; after mariage he, the s^d Coasta, borrows money upon his s^d wife's oarts and redeems one therewith belonging and formerly mortg^d by his father, her consent not appearing to have been obtained. She dies and leaves her moiety to her relations and the church of St. Michael, Dioge D'Coast keeps the possession of the whole, pretending he had jointly with her during her life spent the estate rec^d by her and that in consequence thereof there are several debts outstanding wch he is obliged to pay out of the remainder in his hands; amongst the rest in his inventory he incerts a debt due to his three brothers out of the oart by him redeemed, being an overpluss arising therefrom. Now the Padre objects that as the s^d Dioge D'Coast has converted s^d money to his own use, he thinks it reasonable he should pay s^d debt and not the legatees jointly, his wife nor they having any concern wth what belongs to his brothers and is a transaction solely relating to him and his brothers. The Court cannot find that the s^d Dioge D'Coast's wife has been consulted on this occasion, nor knew anything of this affair, and she declaring (in her last will wch by the custom of this country she had a power to make) that she left her moiety as affores^d, it supposed she beleived herself rich enough and capable of making such a donation. The Court upon the whole are of opinion the s^d Dioge D'Coasta is solely liable to pay his own debt, wch this to his brothers appears to be abstracted from his wife, and accordingly order that he pay the Padre his part according to the tenour of the will out of his half wch they declare valid, a just calculation being first made by the Veriadores of Bombay, whom the Reg^r is ordered to acquaint with the pleasure of the Court in this case and to require a speedy obedience to this order and a report finaly adjusted to be returned to the Register for the Court's perusal next Court-day, that a dividend be made accordingly."

Pursuant to the orders of the Court, the Veriadores audited the accounts and found that the estate was worth 2,973 xeraphins, out of which the Padre was entitled to a dividend of only 180 xeraphins. But D'Costa raised various objections from time to time and evaded the payment of what was found due to Padre Pedro. The action dragged on for months, mainly

owing to the defendant's refractory attitude, till at last the patience of the Court was exhausted and it was constrained to take Dioge severely to task. We hear the last of this matter —at least in this record—on July 12, 1727, when the following order was recorded:

"A controversy arising between Padre Pedro of Mahim and Dioge D'Coasta concerning a partition made by the Veriadores of the s^{d} Dioge D'Coasta's estate, and they both appealing to this Court: D'Coasta, the defendant, being required to acquaint the Bench what objections he had to the s^{d} partition, but alledging nothing but what had been already determined by the Court, the Court, after reprimanding him for his litigious behaviour, confirm the act of the Veriadores and order the s^{d} D'Coasta to deliver to the Padre the contract of sale he has now in his possession as he voluntarily acknowledges he ought to doe in Court."

The question of appointing trustees to look after the estates of deceased persons, as also the supervision of their conduct, legitimately fell within the province of the Court as a Court of Equity. The proceedings of June 1, 1726, contain an elaborate petition from Mr. William Henry Draper, the future and, we believe, the first Mayor of Bombay, concerning certain matters of trust. It opens as follows:

"*To the Worship^{ll} Jno Hope, Esqr, &ca., Justices of the Court of "Judicature.*

"Worship^{LL} S^{R} & Sirs,—

"Having heretofore had occasion to represent to your Worship, &c., the case of my deceased spouse's marriage agreement wth Mr. Sutton (relation being thereunto had may more fully and at large appear, as also the state of Mr. Strutt's affairs), her former husband, therein depending, by vertue of which mariage agreement and her having been appointed sole executrix to Mr. Strutt's will, she became liable to make good the two-fifth parts of s^{d} Strutt's estate, as by the will doth appear, as also to the demands of sundry other persons interested in the s^{d} estate, wch persons are now pressing your petitioner to a compliance therewith."

Mr. Draper then confesses his inability to satisfy the demands made on Mr. Strutt's estate, as he had failed to recover such sums of money from the trustees of Mr. Sutton as, by virtue of

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the aforesaid marriage agreement, might have become due to his deceased wife. The petitioner continues:

"The present posture of those affairs are now become so intricate and complex'd, cheifly for want of the proper papers and accounts wch Mr. Newlin (who formerly took the management of these affairs upon him) carried to Persia and have not been since returned. So that without being duly authoriz'd by Your Worship, &ca., I do not care to compromise these matters on my own accord and having by these means not yet been able to adjust the amount of Mr. Strutt's estate, without wch the proper dividents thereof cannot be punctually ascertained or the severall demands regularly complyed w^th; neither am I indeed a sufficient judge of the lawfulness of those demands or what they may amount to for want of the papers and accounts aforemention'd. Therefore for the more mutual satisfaction of all parties concerned, and that these matters may be accommodated in such a manner that there may not be occasion for any future complaints, I humbly request that Your Worship, &c., will be pleased to take it once more into your considerations and at the same time give me leave to offerr to you the following propositions."

The propositions which Mr. Draper submitted for the consideration of the Court were that whatever money he had already recovered on account of Mr. Strutt's estate he may be allowed to deposit in Court, that a balance of Mr. Sutton's estate then remaining in the hands of his trustees may be ordered to be taken, that the Registrar may be appointed to receive whatever money may be thereafter recoverable to either of the estates of Mr. Strutt or Mr. Sutton, and that the Court may be pleased to defer judgment until the arrival of certain information which the petitioner expected from England. Mr. Draper added in conclusion:

"That in the meantime I shall endeavour to trace and adjust the several demands of Francis George, Ann Baker, Jeejee Jamsett, Moody, &c., from those books and accounts of Mr. Strutt's which are now in my possession, and if your Worship, &c., shall be pleased to grant this request, I humbly desire you will order the parties to remain satisfied till that time."

Mr. Draper's request was evidently granted, and the first account audited by the Court in the matter was that of Francis George, amounting to 667 rupees and 30 reas. But

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the claims on his estate amounted to much more, as we find from the following entry in the proceedings on the next Court-day:

"The claimers on Francis George appearing, the following claims were allowed:

	Rups.	qrs.	reas.
Mr. Massey	110	0	00
Mr. Upton	208	0	00
Coja Phanoos...	29	0	00
Gaspar D'Mell	45	2	00
Geegee Nanabhay	51	0	00
Wood Head	21	0	00
Rich[d] Morril	17	2	00
Cutchree Tom	20	2	66
Antonio De Abrew	4	2	00
Sarg[t]. Cookson	8	0	00
Mr. Bristow	11	2	00
Cap[t] Gibson	471	1	50
Moody	60	0	00
Mrs. Gordin	127	1	06
Salvador Tusheir	40	0	00
	1,219	3	22"

To the above the following note is appended:

"Mrs. Gordon, the Moody and Gaspar D'Mell's acct[s] being not yet adjusted, order the Register examine into the same and report [on?] it. And at the same time make a dividend as audited by the Court to the several claimers according to the above list."

The claims of Ann Baker were next considered, and adjusted as follows:

"The Court persuant to their resolution of the twenty-second of June, this day take into consideration the case of Ann Baker, natural daughter of and a legatee in the will of Cap[t] Euclid Baker, formerly gunner of Bombay, de[cd], and accordingly having examined an attested copy of the will: It appears that the said Cap[t] Euclid Baker therein devised to his said daughter the summ of six hundred rupees to be placed at interest for the maintanance of the girl till she became fourteen years of age, as also a house adjoining to the Buzar, sold afterwards by Mr. Stephen Strutt, the only surviving and acting trustee (Cap[t] Lashland Mackintosh, the other intended by the will, dying before the testator) for which sale amounting to rupees six hundred ninety-nine, one q[r], Mr Strutt has in

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his books given this reason that the interest arising therefrom would in eight years double the principall; notwithstanding this, there appearing no credit upon Mr. Strut's books for the interest arising from either of the two summs, and on the other part the said Anna Baker standing charged both in Mr. Strut's books, and in an acc^{t} curr^{t} now delivered into Court by Mr. Wm Henry Draper, Mr. Strut's executor, for her maintinance from the decease of her father to this day, when she is of full age. The Court maturely weighing and computing the amount of the interest on the one part, and the charges of the girl's maintinance on the other, and unanimously agreeing that they very well ballance one another, decree to the said Anna Baker the sum of twelve hundred ninety-nine, one q^{r}, rupees, being the principal left her by her father, and the said Anna Baker having petitioned the Court that they would please to take her and her concerns into their protection and care, they accordingly order the Register to draw upon Mr. Wm Henry Draper for the afforesaid summ of twelve hundred ninety-nine, one q^{r}, rupees, and to give him a final discharge in their name, and under the seal of their Court for the same, being for the use and in trust for the said Anna Baker."

The Court was, naturally, most careful in accepting the resignation of trustees, and allowed them to renounce their charge only after minutely scrutinising the accounts submitted for their consideration. There is at least one such instance in this record:

"Major Jonathan Stanton and Mr. Robt Poole, petitioning the Court for leave to renounce their trust and throw into Court their concern as Trustees in the will of Capt Peter Passwater, late Gunner of this place, there being a widow and orphans which they humbly beg the Court would take under their care and consideration; and their acc^{ts} of their management during their trust being ready, they humbly beg the Court would please to audit and approve the same, and discharge them from any further concern therein. The Court, taking this into consideration, agree, as a Court of Equity, they are obliged to receive widows' and orphans' concerns into their hands, when legaly offered, and order their Register to call for said acc^{ts} and prepare them for the Court's inspection."

In this connection it is interesting to observe that when the justices had claims on the estates of deceased persons, they felt no hesitation whatever in putting them forward merely because they formed part of the tribunal which adjudged the legality of their claims. For instance, when the Court assembled on December 7, 1726, presided over by the

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Worshipful John Hope, the following claims of the Chief Justice were admitted after due consideration:

"Mr Hope makeing a demand on the estate of Capt Peter Passwater, decd, for twenty pounds sterling due on bond to Mr. Willm Dickonson and by him transfer'd to Mr. Wm Rumbald and now left in the hands of Mr. Hope by Capt Eustace Peacock, attorney to sd Rumbald, the Court admitt of the legallity of sd bond and order the money to be paid to Mr. Hope."

Or again, when the claims on the estate of one Mathew Brandon were adjudged, the claimants included not only the Chief Justice, but one of the justices, as also the Register of the Court. The matter is stated as follows:

"The Court next took into consideration the several claims on the estate of Mr. Mathew Brandon, late supercargoe of ship *Fame*, he dying intestate in his passage from the Maldwies hither, the Secrys estimate of his estate and the demands thereon being read, the following persons were admitted to be legal claimants, the first four being creditors for money lent at Respondentia, and the rest on bond and simple contract, &c.:

	Rups.	qrs.	reas.
Jno Hope Esqr	575	0	00
Mr. Jno Braddyll	1,160	0	00
Mr. Jno Robinson	232	0	00
Capt Alexr Gibson	580	0	00
	2,547	0	00
Jno Hope, Esqr	215	3	75
Mr. Daniel Taudin	406	2	81
Mr. Arthur Upton	150	0	00
Mr. Edwd Clift	35	1	00
Capt Gibson	11	0	00
Mr. Jno Lambton	40	0	00
	858	3	56
	3,405	3	56

Some debate arising as to whether the whole or only a part of Mr. Brandon's estate should be appropriated in satisfaction of the claims of the Respondentia creditors, the matter was

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adjourned to next Court-day, when the following decision was arrived at:

"The affair of Mr. Brandon's creditors being again taken into consideration, and several queries stated, whether the whole or what part of his estate ought to be appropriated to the relief of his Respondentia creditors, it's agreed the Hon'ble the Presid[t] and other Merch[ts] of the Island be consulted thereon (two of the Justices waveing it as being partys concern'd), confirmable to w[ch] the Reg[r] is ordered to lay before the Court, the next Court-day, an estimate wth the proper dividends of the s[d] Brandon's estate."

The meaning of the parenthetical sentence is not quite clear, but probably the Chief Justice and Mr. Justice Braddyll waved their right to sit on the Committee appointed to consider the question, as they were themselves two of the Respondentia creditors.

We have lingered a good deal over the examination of civil matters referred to in this record, and shall now conclude by noticing an affair which is calculated to provoke a smile. A dispute had arisen between the Rev. Dr. Sawbridge and Captain Elias Bates over the payment of a sum of money which the latter had lent to the reverend gentleman. Dr. Sawbridge pretended he had discharged his debt, and, in proof of his statement, produced a note of release purporting to have been signed by his creditor, but the genuineness of which Captain Bates stoutly denied. We may deprive the reader of a little diversion if we state the case in our own words instead of reproducing it in the quaint language of the record. This matter was first judicially noticed on August 3, 1726, as follows:

"The Register presents to the Bench a letter from Mr. Sawbridge, dated in Tellicherry May the 2nd, 1726, being an answer to what he, the said Register, wrote him by the order of Court, in the affair between him and Cap[t] Bates, which is ordered to be entered after this day's proceedings and the consideration thereof referred till Primo Jan[y], the time limited for concluding this affair betwixt the said Doct[r] Sawbridge and Cap[t] Elia[s] Bates."

As ordered by the Court, Sawbridge's letter was entered at

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the end of this day's proceedings. It is written in such a piquant style that we are tempted to reproduce it below:

"S^{R}—It would take up too much to enter upon a long recitall of your proceedings concerning the greatest rascall living and myself; however, pray acquaint Mr. Hope that I have left the originall note with Mr. Adams at Tellecherry in order to be sent up to Bombay by the first safe conveyance, which I don't doubt but he will stay for, should it exceed the limited time before any ships come; and had you lett me know sooner that the attestations I sent last year from Madrass (which are deem'd by all the Courts in India, yours alone excepted, thoroughly sufficient to convince any person living of my innocency) were not of validity enough to over-ballance the oath of so notorious a villain, you should have had the originall by Capt Small. I am,

"S^{r}

"Yo^{r} Very Humble Servant,

"Thos Sawbridge.

"Tellechebry, *May 2nd*, 1726.'

The letter, it will be observed, was couched in terms which rather belie the writer's profession. We are rather surprised to find a clergyman calling his adversary "the greatest rascall living," at any rate in a letter addressed to the Court of Judicature. The Court, however, found, as we shall presently see, that the reverend gentleman was trying to prove his case by abusing his creditor. The original note or receipt, which Dr. Sawbridge alleged Captain Bates had passed in his favour when he discharged the debt, was very minutely examined by the Court, in order to see if the signature of the creditor on it tallied with his usual signature. The justices converted themselves into handwriting experts for the purpose, and expended much skill in deciphering every letter of that receipt, and particularly of Captain Bates' signature. After mature deliberation, they came to the following conclusion:

"The Court in general agree there is a great similitude notwithstanding that Bates persists and affirms it not to be his handwriting, and offers to put the whole issue of the affair upon this single article, that if in any papers that he has signed and wch he says in all are alike, there are any such particular dashes wch he points out, he will forfeit the whole, wch however, though plausable enough, upon a nice examination there appearing some small difference where he remarks, yet the whole Bench cannot alter their opinion as to the great resemblance between

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his usial signing and this on the note, and that if it be not his writing as he has sworn it is not, it is extreamly well imitated, but wch they do not further regard."

On hearing this, the reverend gentleman must have exclaimed that Daniel had come to judgment; for if the Court was satisfied that the note of discharge bore the usual signature of Bates, it must necessarily find that Sawbridge had discharged his debt, and so decide the matter in his favour. But that note formed only one link in the chain of evidence: there were other circumstances in the case which pointed to a different conclusion. The Court recorded its decision as follows:

"Bates having confidently appealed to the witness Mr. Rich whether he saw him execute any such paper and at the same time affirming he never was paid nor rec^d any other consideration for the sum lent Doct^r Sawbridge, and the s^d M^r. Sawbridge never yet medled wth that point though requested, never pleading he had payed the money, only objecting this receipt in bar without any circumstances but that single one of Capt Bates being supposed to have mislaid Mr. Sawbridge's note, but no mention made how or when the sum of four hundred eight rupees due to Bates was accounted for, and it appearing by the oath of Capt Bates, his serv^t Suo Ram, a declaration of Capt Bells and several other circumstances that this money has several times been demanded by Bates or his agents since that note is dated and said to be given, it appears from thence this note has never being (been?) discharged, and this being the unanimous opinion of the Justices of this Bench, who, as a Court of Equity, think a note, however procured, of no validity where no valuable consideration has been paid or received when the same is before them brought in action, and this case being corroborated with Capt Bates denying his signing any such receipt upon oath, and the afforesaid reasons needless to be further enumerated. The Court cannot see reason why Capt Bates should be any longer kept out of his money, and decree it to him accordingly, he giving the proper receipt for the same to this Court."

The Rev. Dr. Sawbridge must have been completely taken aback by this decision. He could not but have protested against the aspersion cast on the oath of a gentleman and a clergyman, and when Mr. Rich, the witness above referred to, returned from England, he appealed to the Court to examine him in vindication of his own character. Accordingly, Mr. Rich was summoned, and after being duly sworn, the

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following evidence was recorded in the form of questions and answers:

"*Q.* Is this your hand

"*A.* It is, to the best of my knowledge.

"*Q.* Did you see Capt Bates sign this note?

"*A.* I did not.

"*Q.* Were you present when Capt Bates signed any other paper?

"*A.* I did not see him sign any paper, but found him there when I came in.

"*Q.* How came you to sign this note not having seen Capt Bates sign?

"*A.* At Mr. Sawbridge's request, beleiving it to be Capt Bates' hand, and relying upon the hon^{r} of Mr. Sawbridge as a clergyman and gentleman.

"*Q.* Do you know anything of any contracts between the parties litigant or anything further concerning this dispute material to inform the Court?

"*A.* I know nothing further, not being acquainted wth either of the parties affairs and had no further concern wth them but witnessing the note in manner afforesaid.

"It not appearing to the Court from the above that anything material offers whereby the affair is put into a better light, but on the contrary an undoubted clandestine practice, the Court cannot see reason for altering their decree, and thereupon finaly conclude the same by confirming their former order for payment of the money to Capt Bates."

What the reverend gentleman thought of the justices who found him guilty of "an undoubted clandestine practice," instead of declaring Captain Bates "the greatest rascal living," the Minute Book happily does not record.

III. Miscellaneous.

The most interesting item in the last section of this chapter is the following extract from the proceedings of the Court dated July 26, 1727:

"There being a general complaint of a great abuse in the prices that Black Taylors charge for their work on this Island, the following regulation was this day made in Court (the whole body of taylors being present and agreing thereunto), and established as a standing rule for the future, viz.:

	Rups.	qrs.	reas.
Black Tafety, Tannah Stuff or stuff Coat, Wastcoat & Breeches	4	0	00

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	Rups.	qrs.	reas.
Cloth Camblet Padsway & Duroys Coat, Wastcoat & Breeches	4	2	00
Trim'd with Gold or Silver thread without lace	6	0	00
Cloth Camblet Padsway, Coat, Wastcoat & Breeches, trim'd with half lace	7	0	00
Ditto, trim'd with whole lace	9	0	00
Wastcoat & Breeches of Silk	1	0	00
Gingham Wastcoat and Breeches	0	3	00
White Wastcoat	0	1	50
Sowing Silk for a plain Sute	0	2	50
Buckram Stay tape and canves	0	1	00
Fine Shirts Plaine Each	0	1	50
Ditto Ruffled...	0	2	00
To work in the house p. month	2	0	00"

It seems ridiculous at the present day that a Court of Judicature should have had to regulate the prices which the native tailors were to charge for their work. The duties of officers in every department of Government are nowadays specified with scrupulous care, and any usurpation of them is regarded with great disfavour. In those days, however, on account of the paucity of qualified men, a larger share of administration must have been assigned to the Court, and the judges were sometimes called upon to perform duties which seem to us to-day singularly inappropriate and undignified. We do not know what special qualifications Chief Justice Cowan and his colleagues possessed to regulate the wages of tailors, but considering that the whole body of them agreed to the regulation, the Court must have been in a position to do so to the satisfaction of all the parties concerned. We do not possess enough of antiquarian knowledge to enlighten the reader on the different kinds of cloth mentioned in the above list; even the omniscient Sir George Birdwood might perhaps find some difficulty in satisfying his curiosity.

About a month before this regulation was framed, the bakers prayed for the intercession of the Court on their behalf. Owing to dearness of wheat they were unable to make reasonable profits. Thereupon the justices were pleased to pass the following orders:

"The bakers being called upon to give in a state of their bread, and pleading the high price of wheat being now twenty rupees P. Ca. by which they are great sufferers, the Court takeing this into consideration

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direct the Clerk of the Market to lower the weight of bread for the present from eight to seven ounces and continue the same till wheat becomes cheaper, and in the meanwhile charge the bakers to make their bread as white and light as the wheat will bear and to observe this better than they have lately done."

Even in these matters the Court aimed at doing justice between the public, on the one side, and the bakers and the tailors on the other. For, if they found the prices charged by the tailors too high, and deemed it necessary to lower them, they also gave immediate relief to the bakers by reducing the weight of bread to make up for the high price of wheat. Whatever duties the Court was called upon to perform, it never forgot its prime function, that of doing justice to those who sought relief.

The Court was entrusted with several jurisdictions, including the admiralty, ecclesiastical, and testamentary. It was in its capacity as a Court of testamentary jurisdiction that it granted probate of wills to the executors of deceased persons. The proceedings of each day generally open with an entry such as the following :

"The last will and testament of Capt Jonathan Appleyard being presented to this Court by his executor, Michael Mead. Three witnesses, viz., Peter Dent, Ant^{o} Serao, and Pedro D'Souza being sworn and answered the usial questions, granted."

Here is a similar entry dated August 3, 1726 :

"The last will and testament of Jno Hancock, late Marine Butcher, was this day presented to the Court when two witnesses, viz., Francis Edwards and Robt Kempton, being sworn to the validity thereof, granted."

We shall notice just one more instance in which the Court granted probate of the will of an Armenian. The entry, dated October 26, 1726, runs as follows :

"The last will and testament of Coja Phanoos, an Arminian Merch^{t}, being presented to the Court by his executor Mr. Heza^{h} King for a probate, when three witnesses, vizt., Sancara Sinay, Deu Data Jossee and Bamon Persee being sworn to the due executing the same, granted."

The Worshipful John Hope acted as Chief Justice during the latter half of 1726. But early in the next year we find the

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Court presided over by another judge, namely, Mr. John Braddyll. A commission was issued by the then Governor of Bombay on February 1, 1727, the terms of which are thus stated in the record:

"A Commission from the Hon'ble the Presid[t] and Councill appointing Jn[o] Braddyll, Esq[r], Chief Justice, Messr[s] Percivall, Lowther and Bendall, Justices, Antonio Rosario, Jeejee Jamset, Amboidas Tuckidas and Fuckoe Aloidin, Assistants, being read, and Mr. Braddyll duely sworn, he accordingly took his place on the Bench."

The point of interest in the above extract is not the appointment of the Chief Justice or justices, but that of the "Assistants." In one of the early regulations framed by Gerald Aungier for the better administration of justice in the town and island of Bombay, provision was made for the appointment of a certain number of natives to act as "Assistants." These were, in all probability, the "Black Justices" to whom reference has been made in another chapter. For they were all natives, representing the four principal communities in Bombay, Portuguese, Parsi, Hindu, and Mahomedan. Mr. Braddyll seems to have occupied the exalted post of Chief Justice only for a few months, for in the proceedings dated June 14th we find the following entry:

"The Worsp[ll] Rob[t] Cowan Esq[r] this day takeing his place on the Bench as Cheif Justice, his Commission was read and he sworn as usuall."

Mr. Bendall also vacated his seat as one of the justices on March 1, 1727. For in the proceedings of that day we find this entry:

"Mr. Ephram Bendall being gone for England on Ship *Stanhope*, the Honb[le] the President has bin pleased to appoint Mr. Hezikiah King in his room a Justice of this Court. He being first sworn this day, took his place on the Bench."

Just one more point of interest and we shall have done with the record. At the end of every month the Register submitted to the Court the account of the receipts and expenditure during the preceding month. The different items of the cash account, on both the credit and the debit sides, as it stood on March 8, 1727, are stated as follows:

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Dr. CASH *Cr.*

1726 7 Feb.	1	To Ballance of Last Month ...				812	1	54	1726,7 Feb.	28	By Servt^{s} Wages, p^{d} the Linguist				6	0	00
	22d	To Francisco Lopes p^{d} into Court on acc^{t} of Lackmidas, being for discharge of his debt to the Bank.	41	3	00						By Court Charges, vizt., Oyl	2	3	00			
											Country Paper ...	1	2	00			
		To Pasq^{s} Monteiro, do.	24	2	00						Halloncore	1	0	00	5	1	00
		To Crisna Sinay, do.	3	3	10										11	1	00
						70	0	10			By Ballance				871	0	64
						882	1	64							882	1	64

E. E. Febr 28th, 1726–7,
ARTHUR UPTON, Regr.

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